SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 347

STANDARD OIL COMPANY OF CALIFORNIA,
APPELLANT,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA

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[fol. 1] [Caption omitted]

[fol. 2]

IN SUPERIOR COURT OF THE CITY AND COUNTY OF SAN FRANCISCO, DEPT. 16

No. 214,441

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

STANDARD OIL COMPANY OF CALIFORNIA, a Corporation, Defendant

COMPLAINT TO RECOVER MONEY

Now come the People of the State of California, plaintiff in the above entitled action, and complain against Standard Oil Company of California, a corporation, defendant in the above entitled action, and for cause of action allege:

I

That said defendant is and was at all times herein stated a corporation organized and existing under the laws of the State of California and doing business therein;

II

That during the quarter of the year beginning July 1, 1929, and ending September 30, 1929, said defendant refined, manufactured, produced and compounded in the State of California, and sold and delivered therein 67,663,270.02 gallons of motor vehicle fuel; that no part thereof was exported or sold for exportation and exported for use outside of said state, nor was any part thereof delivered under contracts entered into prior to the 14th day of May, 1923, or sold to the Government of the United States or any department thereof for official use of said government;

[fol. 3] III

That thereafter, to-wit, on or about the 22nd day of October, 1929, said defendant filed with the State Board of

Equalization of said state on a form prescribed by said state board a verified statement and report showing the total number of gallons of motor vehicle fuel refined, manufactured, produced and compounded by it within said state and sold by it therein during the quarter of the year ending September 30, 1929, and in said statement the number of said gallons was stated to be 67,663,270.02; that thereupon said State Board computed the license tax due or to become due from said defendant because of said sales so made by it and found to be due upon said statement and report the sum of $2,029,898.11, and from said amount so computed and found to be due there was allowed as a deduction the sum of $20,298.98, the same being one per cent of said sum of $2,029,898.11, and the balance due from said defendant upon and by reason of said tax after allowing said deduction was the sum of $2,009,599.13; that thereupon said Board of Equalization extended said sum of $2,009,599.13 upon a tax roll prepared and kept for the purpose, and thereafter and on or before the 30th day of October, 1929, delivered said tax roll to the State Controller of said state and said State Controller did within ten days thereafter notify said defendant that said license tax in said sum was due from it and payable to the State of California on or before November 15, 1929.

IV

That said sum of $2,009,599.13 so due to said State from said defendant as and for said license tax has not nor has any part thereof been paid to said State or to said State Controller except the sum of $2,009,586.53, leaving due and [fol. 4] unpaid the sum of $12.60.

V

That Ray L. Riley is now and was at all times herein stated the duly elected, qualified and acting State Controller of said state and U. S. Webb is now and was at all times herein stated the duly elected, qualified and acting Attorney General of said state, and that said State Controller did subsequent to the 15th day of November, 1929, request said Attorney General to commence this action.

Wherefore plaintiff prays judgment against said defendant for the said sum of $12.60, together with interest

thereon at the rate of seven per cent per annum from the 15th day of November, 1929; for a penalty in the sum of ten per cent of said amount and for the costs of this action.

People of the State of California, by U. S. Webb, Attorney General of the State of California; H. H. Linney, Deputy Attorney General of the State of California, Attorneys for the State of California.

[fol. 5] IN SUPERIOR COURT OF THE CITY AND COUNTY OF SAN FRANCISCO

[Title omitted]

ANSWER OF DEFENDANT—Filed April 13, 1931

Now comes Standard Oil Company of California, defendant in the above entitled action, and answering the complaint of plaintiff herein, denies and alleges as follows:

I

Defendant is a corporation organized under the laws of the State of Delaware and qualified to do business in the State of California and elsewhere.

II

Answering the allegations in paragraph II of said complaint, defendant denies, on information and belief, that no part of the motor vehicle fuel therein referred to was sold to the Government of the United States and/or any Department thereof for official use of said Government, and in this behalf defendant avers that during the period in said paragraph II mentioned, this defendant did sell and deliver 420 gallons, out of the 67,663,270.02 gallons of motor vehicle fuel therein referred to, to the Presidio Post Exchange at San Francisco, California; that at the time in said complaint mentioned said Presidio Post Exchange was, and now is, a post exchange organized and doing business pursuant to and in accordance with regulations of the War Department of the United States.

[fol. 6]

III

Answering the allegations of paragraph III thereof, defendant denies that the balance due from defendant to the

State of California by reason of the tax therein referred to was or is the sum of $2,009,599.13 or any other sum in excess of $2,009,586.53.

IV

Answering the allegations of paragraph IV thereof, defendant denies that there is due from it to the said State of California or to the State Controller the sum of $12.60, or any other sum, by reason of any of the facts set forth in said complaint.

Wherefore, defendant prays that plaintiff take nothing by this action and that defendant have its costs.

Pillsbury, Madison & Sutro, Counsel for Defendant.

Verification of the foregoing answer is hereby waived and receipt of a copy of it is hereby admitted this 13th day of April, 1931.

U. S. Webb, Attorney General of the State of California; H. H. Linney, Deputy Attorney General of the State of California, Attorneys for the State of California.

[File endorsement omitted.]

[fol. 7] IN SUPERIOR COURT OF THE CITY AND COUNTY OF SAN FRANCISCO

[Title omitted]

STIPULATION OF FACTS

It is hereby stipulated by and between counsel for the respective parties herein as follows:

I

The defendant is and was at all times mentioned in the complaint a corporation organized and existing under the laws of the State of Delaware, and duly qualified to do business and doing business in the State of California.

II

During the quarter of the year beginning July 1, 1929, and ending September 30, 1929, the defendant sold and delivered to the Presidio Post Exchange at the Presidio, San

Francisco, California, four hundred twenty (420) gallons of motor vehicle fuel. The tax sought to be levied thereon, at the rate of three cents (3¢) a gallon, amounts to twelve and 60/100 dollars ($12.60), which is the amount here in dispute.

[fol. 8] III

Said gasoline was carried by the defendant in barrels and by tank trucks to the Presidio Post Exchange; and in making delivery the defendant bore the expense and the risk of loss.

IV

The Presidio Post Exchange is and at all times hereinafter mentioned was a post exchange organized under and doing business pursuant to and in accordance with regulations of the War Department of the United States of America, as set forth in Army Regulations No. 210-65, dated June 29, 1929, and is modified by Circular 57 of the War Department, dated October 31, 1929. A copy of said Regulations and of said Circular are hereto attached and incorporated by reference.

V

The Presidio of San Francisco was established as a Military Post under Spanish dominion about 1776. It was continued as a Military Post by the Republic of Mexico and was ceded to the United States by the Treaty of Guadalupe Hidalgo at the conclusion of the war with Mexico. It was reserved for public purposes by Executive Order, dated November 6, 1850, afterwards modified by Executive Order, dated December 31, 1851. It has been continuously occupied by the United States Army as a Military Reservation since that time.

VI

On March 2, 1897, the real property in the City and County of San Francisco, State of California, known as "The Presidio of San Francisco", including the real property upon which the Presidio Post Exchange conducted and has conducted its business, and the place of sale and delivery of said gasoline, was, and ever since has been, held, occupied and reserved by the government of the United [fol. 9] States for military purposes and defense; and in accordance with an Act of the Legislature of the State of

California, entitled "An Act ceding to the United States of America jurisdiction over all lands within this State which have been or may hereafter be acquired by the United States for military purposes", approved March 2, 1897, a sufficient description by metes and bounds and a map and plat of such lands was filed in the office of the County Recorder of said City and County.

VII

Defendant reported said sale to the State Board of Equalization, as required by law, but has declined to pay said sum of twelve and 60/100 dollars ($12.60), claiming that said sale to the Presidio Post Exchange is exempt from taxation.

VIII

The State Board of Equalization duly audited said report and disallowed said claim for exemption from the payment of the tax upon said four hundred twenty (420) gallons of motor vehicle fuel and assessed and levied against the defendant a tax of twelve and 60/100 dollars ($12.60) thereon, which the defendant has not paid in whole or in part, the questions of the legal propriety of such disallowance and of such claim of exemption and refusal to pay such tax being presented for decision by the court herein.

IX

It is further stipulated and agreed that if said sale is not exempt, the amount of twelve and 60/100 dollars ($12.60) is a legal and valid tax against the defendant and is due to the State of California, and a penalty of one and [fols. 10 & 10½] 26/100 dollars ($1.26), representing ten per centum (10%) of the amount of said tax.

Dated: January 23rd, 1931.

U. S. Webb, Attorney General of the State of California; H. H. Linney, Deputy Attorney General of the State of California, Attorneys for the State of California. Pillsbury, Madison & Sutro, Attorneys for the Standard Oil Company of California.

EXHIBIT TO STIPULATION

(Exhibit follows)

ARMY REGULATIONS
No. 210-65

WAR DEPARTMENT,
WASHINGTON, *June 29, 1929.*

POSTS, CAMPS, AND STATIONS

EXCHANGES

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SECTION I

GENERAL

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1. **Establishment and maintenance.**—*a. General.*—At each post, camp, or station the commanding officer will establish and maintain a post exchange whenever—

(1) There is a need for it.

(2) There are organizations present that desire to participate therein.

(3) The personnel is sufficient to profitably maintain and support such an exchange.

Post exchanges are Government instrumentalities. *See Ops. J. A. G., September 25, 1923; Ops. J. A. G., December 2, 1619; Dugan* v. *United States, 34 Ct. Cls. 458, 468.*

b. Branch exchanges.

(1) *General.*—At large posts, camps, or stations, where more than one exchange store is needed or desirable, the commanding officer may establish and maintain branch exchanges or subexchanges, which will be under the supervision and control of and form a

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* This pamphlet supersedes AR 210-65, June 20, 1928 (including Changes No. 2, May 7, 1928), which has been changed as follows:
Paragraphs 2, 5, 8, 17, 27, 32½, 34, 39, 41, 49, 54, and 59½ changed.
Paragraphs 34 and 66 added.
Paragraphs 33 to 76 renumbered.

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part of the post exchange. The commanding officer upon the recommendation of the post exchange council will determine the number and location of the branch or subexchanges.

(2) *Normal number.*—At a post, camp, or station where branch exchanges are established and maintained there will be normally one completely stocked branch exchange to each regimental area or the approximate equivalent thereof. In case it is desirable to combine several regimental groups of participants into one branch exchange on account of particular location or other local considerations, the commanding officer may vary the general basis of apportionment of one branch exchange per regiment.

(3) *Subexchanges.*—A subexchange implies a smaller store not completely stocked, of a more or less temporary character, and is usually established for the convenience of the men at street-car terminals, theaters, clubs, or other educational and recreational centers, temporary camp sites, etc., where men congregate and exchange business is justified.

c. In the field.—During active operations the commanding officer of troops in the field may authorize exchanges when conditions make it desirable and practicable to do so.

d. In time of war.—In time of war, exchanges may be established and maintained, and will continue to function, where practicable, as prescribed in these regulations.

e. On Army transports.—The establishment of organization exchanges by troops traveling on Army transports is not authorized.

2. General authority and responsibility of commanding officer.—Subject to the general supervision of superior authority, the commanding officer has complete jurisdiction over the conduct of all exchanges within or pertaining to his command. He will be held strictly responsible for their efficient operation and for the enforcement of exchange regulations. After he has approved an appropriation of the post exchange council he will be held responsible for all expenditures pertaining thereto not made in accordance with regulations.

3. Designation; name in which business transacted.—*a. Designation.*—The exchange will be designated as the post, camp, company, or detachment exchange accordingly as it pertains to a post, camp, company, or detachment, and will consist of the necessary personnel, offices, warehouses, fixtures, and other property, merchandise stock, a central exchange store (if established—or not as circumstances warrant), and such branch exchanges and subexchanges as may be authorized by the commanding officer.

b. Name in which business transacted.—All the business of an exchange will be transacted in the name of the exchange and not in the name of the exchange officer, exchange steward, or other person. All correspondence, orders for merchandise, and other papers will, therefore, be as follows:

THE POST EXCHANGE,
FORT SNELLING, MINN.

[Date] _____

* * * * * * *

[Signed] THE POST EXCHANGE,
[Typed] By JOHN DOE,
JOHN DOE,
1st Lt. 28th Inf.,
Exchange Officer.

Signature will be made with pen or, when necessary, with indelible pencil, but never by facsimile.

4. Primary purposes, selling prices.—*a. General.*—The primary purposes of an exchange are—

(1) To supply troops, at the lowest possible prices, with articles of ordinary use, wear, and consumption not supplied by the Government.

(2) To afford to troops means of rational recreation and amusement.

(3) Through exchange profits to provide, when necessary, the means for improving the company messes.

b. Equality of purposes.—The affording of means of rational recreation and amusement will be regarded as of equal importance with the supplying of merchandise to troops at lowest possible prices, and with supplementing organization messes.

c. Interpretation of term "lowest possible prices."—The term "lowest possible prices," as used in *a* (1), is interpreted to mean that to the net invoice price of an article, less discounts, plus transportation and overhead charges, a percentage will be added sufficient to cover the cost of handling, breakage, or deterioration, and to make a small net profit. In this connection post exchanges should be conducted in such a manner as to be of real assistance and convenience to the enlisted men rather than as large profit-making institutions.

5. Activities included.—*a. General.*—An exchange (including each branch exchange) may include, when desirable, the following activities:

(1) A well-stocked general store, including, when deemed desirable by the council and approved by the commanding officer, a meat market, a vegetable market, and a gasoline filling station. Sales to civilians at a filling station will be limited to civilian employees of the post, camp, or station.

(2) *A well-kept restaurant.*—In the restaurant or lunch room prices will be made as low as the cost of the articles, increased by expenses of preparation, pay of the assistants, and normal waste, will permit. Other than this the tariff of prices will be regulated by the circumstances surrounding each exchange.

(3) A barber shop, laundry, tailor shop, and shoe-repair shop.

(4) A gymnasium, possessing also the requisite paraphernalia for outdoor athletics, such as baseball, football, tennis, polo, golf, etc.

(5) Recreation rooms equipped with billiard and pool tables, bowling alleys, and facilities for other proper indoor games.

(6) A library supplied with books and periodicals.

(7) A theater in which moving-picture service, amateur dramatics, and other entertainments may be conducted.

b. Restrictions.

(1) Activities other than those enumerated above will not be added to the business of an exchange without the authority of the War Department; nor will licenses or concessions be granted to private individuals, firms, or corporations to operate any of the exchange activities without such authority. See also paragraph 516.

(2) The use of any device which savors of gambling, such as punch boards, slot machines, etc., is prohibited.

c. Price lists will be posted conspicuously in the various activities of the exchange, or the articles kept for sale will be conspicuously priced so that patrons will not need to inquire as to the price of any article.

6. Allied recreational activities.—*a.* In addition to supervising the conduct of the post exchange, the commanding officer is charged with the maintenance of recreational athletics, entertainments, service clubs, libraries, and community cooperation. These activities will be centered, ordinarily, about the post exchange, which may, with the approval of the exchange council and the commanding officer, provide the financial support necessary for their maintenance within the limits prescribed in AR 210-50.

b. Should there be any charge for admission to entertainments run by the post exchange, such charges will be prescribed by the exchange council, subject to the approval of the commanding officer.

7. Effect of change in membership and management.—*a.* When all organizations composing the membership of the post exchange are ordered to change station, the business of the post exchange will be settled in full previous to their departure. Should incoming organizations desire to purchase the stock or temporary buildings of outgoing organizations, representatives of the outgoing and incoming organizations will be directed by the commanding officers concerned to equitably decide the amount to be paid for the merchandise in the exchange. Should incoming organizations not desire to purchase merchandise remaining in the exchange the outgoing organizations will make such disposition as directed by the exchange council approved by the commanding officer.

b. Responsibilities for agreements by former management.—All agreements between the post exchange and others will be terminated when the entire membership of the exchange is changed, unless incoming organizations state in writing their acceptance of the agreements, and such agreements are satisfactory to all concerned.

c. All agreements made by post exchanges will contain a statement to the effect that the agreement will be terminated by an entire change in the membership of the exchange.

SECTION II

MEMBERSHIP

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8. General.—*a. Who may be members.*—The members or stockholders of an exchange, including branch exchanges and subexchanges, will be such companies, troops, batteries, aero squadrons, or other similarly organized units and detachments as have purchased stock in the exchange. The word "detachment" as here used will be understood to mean a number of enlisted men permanently stationed at the post, but who do not belong to any company or similar unit stationed thereat. No detachment of less than three men associated in a mess will be a member, but men of different arms or services who are permanently stationed at the post may be grouped to form a detachment for separate membership as such; or if quartered and messed with an organization stationed at the post such men may be, upon authority of the corps area

commander, attached to the said organization for the purpose of post exchange membership, and the number of shares of post exchange stock purchased by the said organization may be increased accordingly.

b. Extent of membership.—When there is a post exchange with branch or subexchanges, an organization or detachment participating is a member of the main exchange, and will participate in all dividends declared by the post exchange.

c. Membership not obligatory.—Membership in a post exchange is not obligatory. See paragraph 816.

d. Distribution of profits.—When, at the end of each quarter, or oftener if deemed advisable by the council and commanding officer, an exchange is absolutely free from debt a sum sufficient to pay all outstanding bills at any and all times will be taken from the cash on hand and set aside as a reserve fund, and the remainder of the net profits of the exchange for the period specified will be disposed of in the following manner:

(1) Five per cent will be set aside as a fund which will be divided among the members of the exchange proportionately to the authorized enlisted strength for the post, camp or station of the member organizations or detachments. It will be distributed as follows:

(*a*) Where the members belong to regiments the share of such members will be paid into their regimental funds wherever the headquarters of the regiment may be stationed.

(*b*) Where the members belong to independent separate battalions, or similar organizations of whatever arm of service, such portion of their share as is deemed equitable by the council and the commanding officer will be paid to the band or bands serving at the post, and the remainder into the separate battalion, or similar organization, headquarters fund.

(*c*) Where the members belong to organizations having no regimental or independent separate battalion headquarters, their share will be paid to the band or bands serving at the post, if there be any; otherwise to such members.

(*d*) When organizations holding membership in the exchange are temporarily absent the 5 per cent, or the amount set aside, as gained during their absence will be divided among the remaining members of the exchange proportionately to their dividends and distributed as provided for above.

(2) Such sum as the council shall recommend and the commanding officer shall approve will be set aside as a portion of the recreation fund to be disbursed by the recreation officer as prescribed in paragraph 4*f*, AR 210–50. Property purchased with funds so derived will be accounted for as prescribed in paragraph 18*a* (1), AR 210–50.

(3) Such sum as the council, with the approval of the commanding officer, may determine may be appropriated for the benefit of the entire garrison to all or any of the following purposes:

(*a*) Laying out, preparing, and cultivating gardens, and supplying therefor the necessary seeds, roots, or plants.

(*b*) The purchase of books, newspapers, periodicals, stationery, etc., for the exchange or post library.

(*c*) The purchase of gymnastic appliances when there is no gymnasium connected with the exchange.

(*d*) Prizes for athletic sports.

The expenditure of profits for purposes other than these requires the approval of the corps area commander.

(4) The commanding officer is authorized to approve such appropriations to the chaplain's fund from post exchange profits as the exchange council shall from time to time recommend.

(5) The remaining money will be divided among the organizations or detachments contributing to the exchange on such equitable basis as shall be determined by the council with the approval of the commanding officer. Normally the distribution should be made to organizations according to the number of rations drawn by them for the period covered by the distribution. Where differences in this respect arise between the council and commanding officer the decision of the corps area commander will be final. The money thus distributed will be paid into the company or detachment funds. In addition to the dividends for the hospital detachment, the exchange council, with the approval of the commanding officer, shall determine the amount, if any, to be turned over to the surgeon for the sick in the hospital. Donations to a division or brigade headquarters fund, as distinguished from the funds of the headquarters and military police company of the division or of the headquarters and headquarters company of the brigade, are not authorized.

Any variation from these rules requires the sanction of the Secretary of War.

e. Liquidation of shares.

(1) A division of the cash resources after all debts have been paid will also be made whenever the troops, or any part of them, being members of the exchange, change station; in this event no deduction on account of the reserve fund will be made from the share of the withdrawing troops.

(2) The amount of any loss that an exchange may sustain in consequence of the failure of a soldier to pay for articles properly bought on credit, whether by his discharge without sufficient money due on his final statement to pay the debt or by his desertion, will be deducted from the share of the profits of the company or organization to which the defaulter belonged. Losses by fire or other casualty, death of the debtor, depreciation of value of the fixtures, and deterioration of articles kept for sale, and the accidental breakage of fixtures or other property will be borne by all the participating organizations in common, and will be deducted from the gross receipts before dividing the profits. Credit accounts should be treated as bills receivable until they are settled or found to be a loss, but bills receivable should not be included in the gross amount from which profits are resolved. The amount of cash on hand on the dates specified, after setting aside a sum sufficient to pay all debts, constitutes the sum subject to distribution.

9. Application for membership.—The commanding officer of a company or similar unit or detachment desiring membership in a post exchange will make application therefor in writing to the commanding officer. This written application will be forwarded and filed with the exchange records.

10. Admission to new exchange.—*a. Number of shares.*—The total number of shares in an exchange will be the same as the total authorized strength for the post, camp, or station in enlisted men of all organizations participating in the exchange.

b. Amount to be paid.—When an exchange is first established, the exchange council will fix the amount necessary for its establishment. When this amount has been determined, it will be divided by a number equal to the number of shares, the result being the value of one share. The amount to be paid by or to be charged to any company or detachment for its entrance fee or capital stock will be determined by multiplying the value of one share by a number equal to the authorized enlisted strength for the post, camp, or station of the company or detachment seeking admission.

11. Admission to an established exchange.—*a. Appraisal of value of exchange.*—Whenever a company or detachment applies for membership in an exchange already organized, a careful appraisal of the net worth of the exchange will be made by a disinterested officer—preferably a field officer—to be appointed by the commanding officer, who, whenever practicable, will be assisted in the performance of the duty by two officers, one representing the stockholders and one representing the incoming organization. These assistants will be designated by the commanding officers of the organizations concerned. The report of the appraiser will be accompanied by itemized lists of property and merchandise as certified by the exchange officer.

b. Amount to be paid.—The amount to be paid by an incoming organization will be determined by dividing the net worth of the exchange, as determined by the appraisal, by a number equal to the number of shares already owned in the exchange, and multiplying the quotient by the authorized enlisted strength.

c. Increase in number of shares; disposition of amount received.—The number of shares in the exchange will be increased by a number equal to the authorized enlisted strength for the post, camp, or station of the incoming organization. The sum paid into the funds of the exchange, as provided in *b* above, will be regarded the same as funds originally invested and be properly entered on the books of the exchange.

12. Admission on credit.—*a.* A company or detachment joining an exchange when unable to pay in cash may, upon the recommendation of the exchange council approved by the commanding officer, be charged with its entrance assessment, and such charges may be liquidated from the company's or detachment's share of the profits of the exchange when dividends are declared, or upon closing out of the exchange. An organization joining on credit will submit to the exchange council some written evidence of its debt and obligation to pay the amount assessed, and such paper should be carried on the books of the exchange as an "account receivable." It is an asset and should be reduced in value from time to time as the profits are divided.

b. When an organization is admitted on credit, the number of shares will be increased as in paragraph 11*c*.

13. **Temporary privileges in exchange.**—When an organization is to be only temporarily stationed at the post, camp, or station, membership in the exchange may, upon recommendation of the exchange council, approved by the commanding officer, be denied, and in such case the organization in question may be allowed the privileges of the exchange and then shall be paid not to exceed 10 per cent of the amount spent in the exchange by the members of the organization in lieu of its share of net profits. The exact percentage to be paid will be fixed by the exchange council, subject to the approval of the commanding officer.

14. **Withdrawal from exchange.**—*a. Upon change of station.*—When organizations are ordered away from a post, camp, or station, and they have an interest in the exchange, their interest therein will be liquidated.

b. General procedure, withdrawal.—When an organization desires to withdraw from an exchange, the procedure will be similar to that for admission to membership prescribed in paragraph 10. The value of its share of the net worth being determined, that sum will be withdrawn from the gross funds of the exchange and paid over to the withdrawing organization. The exchange will turn over to the withdrawing organization any of its enlisted men's notes, and the amount thereof will count as cash payment to the organization. Any amount due but, for lack of available funds, not paid to an organization when retiring from an exchange will be evidenced by a note for the amount, with legal interest, and will be liquidated as other bills, payable out of the first profits accruing to the exchange. The amount so due and unpaid will be carried on the books of the exchange as an "account payable" and be regarded as a liability until paid.

15. **In case of complete transfer of an exchange.**—See paragraph 7.

SECTION III

PERSONNEL.

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16. **General.**—*a. When there are no branch exchanges.*—Under the commanding officer, and subject to the approved recommendations of the exchange council, the following personnel will conduct the operation of an exchange which has no branches:

(1) An exchange officer.
(2) An exchange steward.
(3) Such other assistants as may be necessary and authorized by the exchange council and commanding officer.

b. When there are branch exchanges.—When there is a branch exchange, or exchanges, the exchange officer provided for in *a*(1) will be known ordinarily as the post exchange officer, and there will be detailed for each branch exchange an officer who will be assistant to the post exchange officer, a branch exchange steward, and such other assistants as may be necessary and authorized. How-

ever, when the garrison consists of a single regiment, or similar command, or when the branch exchanges are small, the assistant exchange officers may be omitted, the duties being performed by the post exchange officer.

a. Post exchange council.

(1) Post exchange councils are assembled to—

(*a*) Audit the exchange funds.

(*b*) Ascertain and examine the sources from which and methods by which they have accrued.

(*c*) Recommend expenditures and appropriations therefrom.

(2) (*a*) Except as prescribed in (*b*) and (*c*) below, the post exchange council will consist of the post exchange officer and the commanding officers of each company, troop, battery, hospital detachment, or similar organization participating in the profits of the post exchange as members thereof.

(*b*) In posts or camps containing tactical divisions or other large bodies of troops, the post exchange council may, when so ordered, consist of the post exchange officer and the commanding officer or a representative selected by him of each regiment or other separate organization having one or more units participating in the exchange.

(*c*) At a general hospital the council will consist of not less than three members, in addition to the exchange officer. Members in excess of those required by (*a*) above will be appointed by the commanding officer.

(3) The post exchange council may delegate to an executive committee of its own members the performance of such portion of the duties prescribed for the council as the council may decide, but the council retains its responsibility.

(4) In meetings of the post exchange council each member will be entitled to vote on all questions the number of votes equal to the number of shares of stock held by the organization of which he is the representative, and a majority of the number of shares of stock voted will decide the question.

(5) The council may be convened at any time at the call of its president or at the request of the exchange officer or one of its members or by direction of the commanding officer and, subject to the approval of the latter, will—

(*a*) Designate the articles to be kept for sale.

(*b*) Fix the prices at which they will be sold.

(*c*) Authorize and supervise all purchases of supplies.

(*d*) Fix the schedule of charges of the barber shop, laundry, restaurant, cobbler, and the prices charged by company tailors and tradesmen for making and repairing uniforms of enlisted men.

(*e*) Not later than the 15th of each month, meet to—

1. Examine the books of the exchange.

2. Inspect the quality and prices of the articles for sale.

3. See that the exchange regulations are complied with.

A record of the attendance by name will be entered in the council book.

(6) Prior to the meeting of the council the commanding officer will designate one member of the council other than the exchange officer to audit the accounts and records of the exchange. The officer so designated will certify in the exchange council book—

(*a*) That he has audited all of the accounts and records of the exchange in detail as required by Section VIII,

(*b*) That the financial condition of the exchange, as shown in the council book is correct,

(*c*) That the accounts and records were found correct except ---------- (here should be listed all irregularities and deficiencies noted during the audit, including accounts found delinquent), and

(*d*) That the following results were obtained from verification, under paragraph 64, of the stock record account:

	Selling price	
Inventory, beginning of month	$--------	
Merchandise purchased during month	--------	
Total accountability		$--------
Receipts from sales during month	--------	
Other credits:		
Merchandise returned	--------	
Merchandise condemned	--------	
Merchandise expended	--------	
----------	--------	
Inventory, end of month	--------	
Total credits and on hand		----------
Difference		----------

(7) At the end of each month and as provided for in paragraph 17 *b* (1) (*d*), a member or members of the council, detailed by the commanding officer, will take a thorough inventory of the stock, cash, and fixtures. The officer or officers so designated will make entry (or will retain one copy of the inventory taken and will check therefrom the posting) in the inventory column of the stock record book of the inventory and the value at both cost and selling prices of each article of stock, together with total values of same at both prices. All inventory data will be carefully guarded by the inventory officer until finally posted and checked by him in permanent form in the inventory column of the stock record book. The inventory officer will certify in the stock record book—

(*a*) That he has accurately inventoried the stock, cash, and fixtures of the post exchange;

(*b*) That the record of inventory of the stock, including both its cost and selling values, and that of the fixtures, including their present values, as entered therein, are correct; and

(*c*) That the actual cash on hand and in bank on ---------- (Date) was $----------

(8) A statement of the result of the monthly investigation and of the accounts of the exchange officer, showing the receipts and expenditures during the month; the assets and liabilities and the value or net worth of the exchange at the end of the month; the increase or decrease in the value of the exchange since last report; the profit or loss in the different departments, etc., constituting this increase or decrease and the percentage of gross profits, all a part of the proceedings, will be entered in the post exchange council book which will be kept at each post and submitted to the commanding officer for his action. Should the post or other commander disapprove the proceedings, and the council, after reconsideration, adhere to its conclusions, a copy of the proceedings will be sent by the commanding officer to the corps area commander, whose decision thereon will be final. The final orders in each case will be entered in the council book. A copy of the statement, with the commanding officer's remarks indorsed thereon, will be exhibited in a conspicuous place in one of the rooms of the exchange during the ensuing month. Any question not involving pecuniary responsibility upon which the exchange council and commanding officer may disagree will be submitted for final decision to the corps area commander.

17. **Exchange officer.**—*a. General.*—The post exchange officer will be carefully selected and will be detailed by the commanding officer. He must be fully in sympathy with the purposes of the exchange and must possess the business qualifications necessary for its success. He will receive no compensation for his services as exchange officer. In large commands he should be a field officer of extended experience.

b. General duties.

(1) *Of exchange officer.*

(*a*) Under the commanding officer, the post exchange officer is in charge of the post exchange and is responsible for its management. He will prescribe and enforce rules of order. He is responsible for the proper performance of the duty of his assistants. He will in person check their accounts frequently, and will each day check up the steward's daily report. He will be the custodian of the exchange funds, and as such he will himself keep the cashbook and make all entries therein. At a convenient time, which meets with the approval of the commanding officer, prior to closing the exchange each day he will, for safe-keeping over night, place and lock in his office safe all cash and checks except such amount in the exchange steward's possession, not to exceed the amount of his bond (par. 22), as the commanding officer on the recommendation of the council may authorize; and will deposit all except a working balance in a bank at the first opportunity.

(*b*) No employee of the post exchange or any of its branches will have access to the cash of the exchange after it has been turned over to the post exchange officer, or, in the case of branch exchanges, to any of his commissioned

assistants. Except for small amounts of cash which may be necessary to be kept in the cash registers during the hours of the current day's business for the purpose of making change, and except for cash necessary to be on hand for making change on pay day, all post exchange funds will be kept on deposit in a reputable national or State bank, or trust company other than a private bank, preferably a United States depository which is a member of the Federal Reserve banking system. In case no national bank is reasonably available, a regularly chartered State bank may be used as a depository for post exchange funds. The post exchange officer is responsible for all loss of post exchange funds, where the loss is due to his fault or neglect. Under no circumstances will post exchange funds be taken away from the post where the organizations to which they pertain are stationed, except as may be necessary to pay indebtedness, or for deposit in a bank.

(*c*) Should the officer who is custodian of the post exchange fund be absent from the post, on leave or otherwise, for a period beyond 3 and less than 10 days, he will leave the funds with the officer acting in his place, taking a memorandum receipt therefor. If an officer is to be absent for more than 10 days, he will regularly transfer to his successor the funds of which he is custodian.

(*d*) When an exchange officer is relieved, an inventory of all stock, fixtures, notes receivable, credit checks, and coupon books on hand, etc., will be taken and the assets so ascertained to be on hand, together with all the funds, will be transferred to his successor, receipts being taken therefor.

(*e*) In transferring funds to a successor the accountable officer will make the following certificate, including list of outstanding debts and obligations, in the fund or council book:

"I certify that, to the best of my knowledge and belief, the following is a complete and accurate statement of all outstanding debts and obligations to date, payable from this fund."

In case there are no outstanding debts or obligations, he will certify accordingly.

(*f*) Post exchange funds deposited in a bank, will be placed under their official designation as, for example, the Post Exchange, Fort Meyer, Va., by—— 1st Lt. 3 Cav. Exchange Officer, and not to the credit of the officer who is custodian.

(2) *In case of large exchanges.*—The post exchange officer will be in charge of all exchanges at the post, camp, or station. Ordinarily he will be in personal charge of the central exchange store, where the office of the post exchange should be located. In general he will—

(*a*) Manage the central exchange store and all branch and sub-exchanges.

(*b*) Cause the books and accounts of all branch and subexchanges to be kept at the central exchange store.

(*c*) Supervise and coordinate the accounting systems of branch and subexchanges in accordance with the accounting system prescribed herein and to insure uniformity.

(*d*) By authority of the post exchange council, approved by the commanding officer, he will make purchases (par. 51) and settlements for the central exchange store, and for all branch and subexchanges to insure lowest costs.

(*e*) Under the approved policy of the post exchange council, regulate selling prices in all exchanges with a view to establishing and maintaining a uniform price for the same article.

(3) *Of assistant exchange officers.*—Under the post exchange officer, the duties of an assistant exchange officer are similar to those of an exchange officer. He will be detailed by the commanding officer and will conduct the affairs of his branch exchange in accordance with instructions from the post exchange officer. Ordinarily there will be detailed one assistant exchange officer for each branch exchange. Subexchanges should be placed under the supervision and management of the nearest branch exchange officer; or they may be managed directly by the post exchange officer. In the temporary absence of the post exchange officer, the senior assistant exchange officer will act as post exchange officer, unless otherwise directed by the commanding officer.

18. **Exchange steward.**—*a. General.*—The exchange officer will be assisted by an exchange steward, generally a noncommissioned officer, but in large exchanges where financial and other considerations fully justify it he may be a civilian. The exchange steward should possess a good knowledge of commercial customs, should be of unquestionable integrity, and of sufficient firmness and strength of character to enforce order and discipline about the premises.

b. General duties.

(1) *General.*—In the temporary absence of the exchange officer the exchange steward will be in immediate control of the exchange and the business thereof when there are no commissioned assistants. Except where a bookkeeper is employed, the steward will keep the records and books of the exchange, under the supervision of the exchange officer. The steward will exercise the necessary supervision over his subordinates, frequently checking their conduct of business. In case the post exchange has branches, there will be a steward for each branch or subexchange. There is no authority for the steward or any other enlisted or civilian subordinate to make purchases for or contract indebtedness against the post exchange. See paragraph 17*b*(2) (*d*).

(2) *Daily report.*—The exchange steward will submit to the exchange officer a daily report covering the day's transactions, known as "Steward's Daily Report," showing the following:

(c) *1.* Cash received from sales.
2. Cash received on account.
3. Cash expended.
4. Cash ahead or short.
5. Cash-register readings.
(*b*) *1.* Credit checks received from sales.
2. Credit checks outstanding.

These reports, exhibiting the exchange officer's approval, will be placed on file in a conspicuous place in one of the exchange rooms.

19. **Assistants.**—The exchange steward and branch or subexchange stewards will be assisted in the conduct of the business by the necessary assistants. These assistants will ordinarily be enlisted men, but in an exchange where financial and other considerations fully justify it they may be civilians, preference being given to retired enlisted men and honorably discharged soldiers. When enlisted men are detailed for duty in an exchange, they will, as far as practicable, be from organizations participating in the exchange.

20. **Employment of bookkeeper.**—A bookkeeper may be employed by an exchange when such employment is evidently desirable and the financial condition of the exchange entirely justifies this expense.

21. **Prohibition of perquisites.**—No exchange officer or assistant of an exchange, either directly or indirectly, shall have any personal interest in purchases, sales, or profits, or any advantage of wastage or perquisites of any kind whatsoever. Exchange officers and employees will not be permitted to receive gifts or presents of any kind from merchants or individuals having business relations with the post exchange. The acceptance of presents by any person connected with a post exchange is considered incompatible with a proper performance of exchange duties.

22. **Bonding of exchange officers or assistants.**—When desirable an exchange council may, with the approval of the commanding officer, require a bond in a reasonable amount from any exchange officer or assistant, to insure the proper handling of the funds and property intrusted to them. The expense of bonding will be borne by the exchange.

23. **Employment of auditing accountant.**—With the approval of the commanding officer, an exchange council may authorize the employment of an expert accountant at stated intervals to audit the books of the exchange, the expense to be borne by the exchange. In such cases the commanding officer and the post exchange council retain their full responsibility.

24. Committees of noncommissioned officers.—*a. Composition.*

(1) *Where there are no branch exchanges.*—For each exchange having no branches, there will be a committee of noncommissioned officers, consisting of one noncommissioned officer from each organization and detachment participating in the exchange, and known as the "Exchange Committee of Noncommissioned Officers."

(2) *When there are branch exchanges.*

(*a*) *For the post exchange.*—For each post exchange with branches there will be a committee of noncommissioned officers consisting of one noncommissioned officer selected by the commanding officer to represent each branch exchange.

(3) *For each branch exchange.*—For each branch exchange there will be a committee of noncommissioned officers consisting of one noncommissioned officer from each company and detachment within the branch exchange area.

b. Meetings; duties.—The exchange committee of noncommissioned officers will be convened by the commanding officer not less than four times a year. The committee will submit to the post exchange council its views, orally or in writing, in respect of the immediate internal operations of the exchange, and it will recommend any changes that may be desired by the enlisted men. Its views and recommendations will be carefully considered by the council, whose action thereon will be reviewed by the commanding officer. Recommendations approved by the commanding officer will be put in effect at once.

SECTION IV

MANAGEMENT

	Paragraph
General	25
Blank forms	26

25. General.—The following suggestions, based upon the systems which have been found most satisfactory by experienced exchange officers, are published for the information of all concerned:

a. Scheme for keeping account of stock.

(1) All stores not in salesroom to be kept in storeroom under lock and key and a competent employee detailed as storekeeper. He should receive all stores of whatever nature coming into the exchange and issue the stores to the several departments on requisitions in writing approved by the exchange officer or the steward. (Form A.)

(2) If stores in one department are needed in another they should be turned in to the storekeeper on approved "Turn in" card (Form B) and issued on approved requisition. Damaged or spoiled stores should be entered on a "Damage Report" (Form C), which, after approval by the exchange officer or steward, should be turned over with the stores to the storekeeper.

(3) The storekeeper should be provided with a stock record book in which to charge the storeroom with the cost of all stores received and credit it with the cost of all stores issued, charging each department with the cost of stores issued thereto, crediting each department with the cost of all articles sold and the cost of all stores turned in on account of damage or otherwise. (Form D.)

(4) The invoices of stores received together with the approved "Turn in" orders will be the vouchers for the debit entries of the storeroom account. The credit entries will be the approved requisitions. Approved receipted requisitions will be the vouchers for the debit entries against each department; and sales (cost value of articles), "Turn in" orders, and damage reports will be the vouchers for the credit entries.

(5) The balance on hand in the storeroom and in each department, as shown by the stock record, should be equal to the total cost of the articles on hand in each as determined by inventory.

(6) This system does not depend on the names of the individual articles, except as to inventory, but deals only with the total cost values, thus eliminating much detail, but at the same time showing whether or not the stock is being properly accounted for.

(7) There are three checks:

(*a*) For all articles reported sold the equivalent in cash, checks, or credit must be turned in by the salesman.

(*b*) Should a salesman report less than he actually sells, he will be short at the end of the month, or at such time as he may be checked up. All shortages will be made good by the salesman.

(*c*) The storeroom and each department may be checked at any time by taking an inventory, determining the total cost of the articles found to be on hand, and comparing the same with the balances shown by the stock record.

(8) The stock record should be ruled so as to show—

(*a*) The total cost of articles on hand in the storeroom at the last inventory.

(*b*) The total cost of articles received into the storeroom since the last inventory, as shown by invoices, transferes from departments, etc.

(*c*) The total cost of articles on hand in each department at the last inventory.

(*d*) The total cost of articles issued to each department on approved requisitions.

(*e*) Cost of articles sold from each department.

(*f*) Cost of articles turned in from each department.

(*g*) Cost of stores condemned.

(9) Another method whereby a verification can be made is to calculate the value at the selling prices of all articles on hand at the beginning of the month in each department and to charge it with the total; then charge each department with the selling price of all goods issued to it during the month; the total of the two is the amount for which the department is accountable. Crediting the department with the amount of sales and with the value of goods turned in, damaged or spoiled, and condemned, at the selling prices, gives the amount accounted for. The difference between the two should be the total value of merchandise on hand at selling prices. The verification by the auditing officer required by paragraph 71 is a check against the exchange officer of all stock for which the latter has assumed accountability. For his own protection, the exchange officer should in turn check against each department in accordance with the provisions of this subparagraph in order definitely to fix the responsibility to him for any shortage that may exist, charging such shortage against the responsible salesman or salesmen, as prescribed in (7) above.

b. Simplifying accounts when exchange is on a cash basis.—Enter each invoice in a purchase record, as shown in Form E. (A unit-ruled blank may be obtained for this purpose, or an ordinary blank may be ruled as indicated.) When the bill is paid, enter the information as shown. This system is suitable

only when the exchange is on a cash basis. It has the advantage of showing all invoices on the same account. If the invoices are numbered serially and bound in serial order at the end of the month, auditing is facilitated. When this system is used the bill register is unnecessary.

c. Simplifying accounts that are practically cash accounts.—As accounts for merchandise purchased by officers and organizations are required to be settled at the end of the month and are practically cash accounts, the following scheme will reduce clerical work and facilitate auditing:

All charge slips are entered as received, under the name of the purchaser, in a duplicating bill file, consisting of a binder containing sheets with the exchange billhead and blank sheets alternately. The name of the purchaser is first written in the billhead and then the charges are entered from the charge slips received from day to day, the whole being duplicated on the blank sheet by carbon process. The duplicate should be retained and the original sent out as a bill.

d. Restaurant account.—A separate account should be opened with the restaurant (or lunch counter), as this is a manufacturing department and requires careful supervision to enable it to yield suitable profits. This account should show the quantity and cost of all articles received for the restaurant, cost of labor, and the quantity and total cost of all articles as made up for sale.

e. Account of sales.

(1) Each salesman should be required to keep a record of each sale made by him. This may be kept conveniently on a duplicate sales pad. If the system of keeping account of the stock described herein should be adopted, the salesman should note on the retained slip the cost of each article sold and should enter the total cost of the sale shown by each slip on a tally card in the back of the sales pad. Credit sales must be shown by writing the name of the purchaser at the top of the slip. Cash and check sales will be shown by the absence of the name of the purchaser. Cash slips may be marked + and check slips #, in order to distinguish them. At the close of the day's business the steward should receive from each salesman the tally card showing the total cost of the articles sold, together with the sales slips and a report on a form similar to the following:

Sales Report

Fort _____,

_____, 192

Cash _____

Checks _____

Credit _____

Total _____ _____

_____

In charge.

(This will accompany the steward's report)

AR 210-65

(2) The steward should total the slips under each head, compare them with the report, and check the total of all sales as shown. He should also total the cost prices of the articles sold by each salesman as shown by the tally card, and should see that the storekeeper enters the same in the stock record to the credit of the proper department. The steward should also see that the charge slips are entered on the proper accounts of the duplicate bill file, and should then make out his daily report to the exchange officer on a form similar to the following:

STEWARD'S DAILY REPORT

Post Exchange,

Fort.....

RECEIPTS

	Credit	Checks	Cash	Total
Restaurant.....				
Store.....				
Recreation rooms.....				
....., etc.....				
.....				
Total.....				

Checks issued, $.....

....., *Steward.*

Received, $.....

[Signed] .....

[Typed] *1st Lt.* ——— ———,

Exchange Officer.

....., 192 .

(3) *Cash register.*—When practicable, one or more cash registers, purchased from exchange funds, should be used in the exchange. The turn-back keys of cash registers should be in the hands of the exchange officer or assistant exchange officer to enable him to make verification of reports made from the registers.

26. Blank forms.

FORMS

Form A

Requisition

Dep't..... Date.....

Clerk..... O. K.....

Amt.	Article	Cost	Total
	Total....		

Received the above articles.

.....

Check carefully, as you are responsible for this property.

Form B

Turn In

Dep't..... Date.....

Clerk..... O. K.....

Amt.	Article	Cost	Total
	Total....		

.....

Storekeeper.

Make in duplicate and keep one.

NOTE.—This form should be printed in red ink.

Form C

Damage Report

Dep't..... Date.....

Clerk..... O. K.....

Amt.	Asticle	Cost	Total
	Total....		

.....

Storekeeper.

Make in duplicate and keep one.

NOTE.—This form should be printed in red ink.

Form D

Storekeeper's Stock Record (Par. 25 a (3))

191			Storeroom										Grocery										Notions										Etc.
			Dr.					Cr.					Dr.					Cr.					Dr.					Cr.						
Jan.	1	*Inventories*	£	5	0	0	00							6	5	0	00							5	0	0	00							
	1	*Requisition*								6	0	00			6	0	00																	
	1	*Sales*																		4	0	00								2	5	00		
	2	*A. B. & Co. (1)*		1	0	0	00																											
	2	*Damage*																																
	2	*Turn in*				5	00																									1	00	
	2	*C. D. & Co. (1)*			5	0	00													5	00												
		Etc.																																
		Totals	£	6	5	5	00			6	0	00		7	1	0	00			4	5	00		5	0	0	00			2	6	00		
		Balances						£	5	9	5	00							6	6	5	00						4	7	4	00		
								£	6	5	5	00							7	1	0	00						5	0	0	00		

Form E

Purchase Record, Month of January, 192

191			1 Total				2 Merchandise				3 Expense				4 Fixtures				5 Errors				Discount 10	30	60	Date paid		Amount paid				Discount			Remarks
Jan.	2	A. B. & Co.	1	6	0	00	1	0	0	00					6	0	00						2			Jan.	10	1	4	7	00			3	00	
	2	C. D. & Co.		7	5	00		5	0	00			5	00	2	0	00			1	25		6			Jan.	12			6	9	25			4	50	

SECTION V

RECORDS

	Paragraph
General	27
Cashbook	28
Journal	29
Ledger	30
Stock record book	31
Bill register	32
Invoice file	33
Incoming mail	34
Other books and records	35

27. General.—*a.* Except as otherwise authorized in paragraph 35, the books named in this section will be kept in each post exchange, in the manner described hereinafter.

b. How accounts kept.

(1) *General.*—The post exchange officer will cause all the accounts of the exchange, including those of branch or subexchanges to be so kept that the status of the exchange or any of its branches can be readily understood at any time and that the information necessary to render the prescribed reports will be readily available.

(2) *Double entry system.*—A double entry system of bookkeeping will be used.

c. Destruction of old records.—All invoices, receipted bills and other books and papers relating to the business of an exchange, except the exchange council book, and pertaining to accounts that have been closed more than six years, may be salvaged as no longer required for the protection of the exchange, except in the case of an exchange where the statute of limitations prescribes a longer period on such accounts, in which case the papers will be kept for such longer period, unless with respect to an entry or omission of an entry therein a civil claim or criminal action shall have been presented or initiated, under which circumstances the destruction of the records concerned will be postponed until after disposition of the claim or criminal action. Under the direction of the commanding officer, the papers specified will be salvaged by the exchange officer who will record the action in the exchange council book.

d. When exchange abandoned.—In the event of the abandonment of a post, the post exchange council book, together with all records not salvaged as above provided, will be forwarded to The Adjutant General.

28. Cashbook.—*a.* In the cashbook will be entered each day's transactions, cash received being entered on the left hand, or debit side, and cash paid out on the right hand, or credit side. The date, explanation of the entry, and the amount of the transaction will be entered on a separate line for each transaction. In large post exchanges, where it is necessary to keep a record of receipts and expenditures by departments, such as store, lunch room, meat market, etc., separate columns will be provided for debit and credit entries under each such department.

b. Vouchers.—Each disbursement entry in the cashbook will be supported by an itemized voucher properly receipted by or for the party with whom the transaction was effected. Similarly each entry therein showing a cash receipt, other than one required by paragraph 18 *b* (2) to be shown on the "Steward's Daily Report," will be supported by an itemized voucher (invoice

of funds) properly signed by or for the party with whom the transaction was effected. All other entries showing cash receipts will be supported by the exchange steward's daily reports, which will constitute the remaining debit vouchers. Each set of vouchers (receipts and disbursements) will be serially numbered beginning with No. 1 for the first entry of each month. Each voucher to which an invoice pertains will, in addition to the notations required by paragraphs 32 and 33 to be placed on such invoices, bear the statement that the voucher is correct and just. (See par. 68 d.)

A paid check bearing across the extreme left end of the reverse side thereof, and immediately above where the first indorsement thereon will appear, the notation, "Payment acknowledged on our invoice No. _____, dated _____ (blank spaces to be filled in), together with the invoice or invoices pertaining thereto, may be used as a voucher. A paid check without such notation will not be used as a voucher unless accompanied by a certificate of the exchange officer showing definitely the reason why a properly signed and itemized voucher could not be obtained and also showing by items the exact articles purchased and the cost of each. When it is not practicable to obtain a receipted or signed voucher, the sufficiency of the voucher as certified will be determined and indorsed thereon by the exchange council.

29. Journal.—The journal will be used to prepare transactions for posting to the ledger. It will show by debit and credit items such original entries affecting the business of the exchange as are not posted from the cashbook or other books of original entry.

30. Ledger.—*a. General.*—In the ledger will be entered under separate accounts all debit and credit transactions affecting the business of the exchange, so as to show the amounts due to or from the exchange on each account. The entries under each account will be made from the totals shown in the columns in the cashbook provided therefor, as stated in instructions with reference to the cashbook, or from the journal, if such columns are not provided.

b. Heads under which accounts kept.—In the ledger, accounts will be kept under the following heads:

(1) *Post exchange.*—To show the value of the exchange. This account will be debited with any increase and credited with any decrease in the worth of the exchange.

(2) *Merchandise.*—To show on the debit side the cost of merchandise purchased and on the credit side the amount received for merchandise sold. This account will, at the beginning of each month, be debited with the value at cost price of the merchandise then on hand as per inventory, and will during the month be debited with the cost of all merchandise purchased during that month. It will be credited during the month with all sales of merchandise, and at the end of the month with the value at cost price of all merchandise then on hand as per inventory. The difference between the amounts shown in the debit and credit columns will be the profit or loss for the month. In large exchanges, when it is desired to keep a record of profit and loss by departments, the merchandise account may be kept by departments.

(3) *Bills receivable (enlisted men).*—To show the value of checks or coupons issued to enlisted men, and the amount of cash received

from them in payment of their bills. This account will be debited with all notes given by enlisted men for checks or coupons and credited with all amounts received in payment thereof. The difference will be the amount of notes unpaid.

(4) *Bills receivable (notes).*—To show the amount of notes given by organizations in part payment of purchase money or for other purposes, also the amount of payments thereon and credits from dividends. This account should be debited with all notes received and credited with payments thereof and dividend credits if payments have not been made.

(5) *Bills receivable (credit sales.)*—An account with each person, firm, or organization having any credit transactions with the exchange. This account will be debited with all credit sales and credited with all amounts received in payment therefor. In large exchanges, instead of keeping the accounts individually in the ledger, such accounts may be kept individually in the credit sales book, and at the end of the month or period the total debit and credit entries posted in the ledger. In individual credit accounts of this kind many up-to-date business houses, practically all banks, and some post exchanges have installed automatic bookkeeping machines wherein a loose-leaf ledger and statement system is used. This does away with journal entries and greatly simplifies accounting. Loose leaf statements are printed off directly from the daily credit slips and the account is always balanced to date. At the end of the month it is necessary only to withdraw the original statement which serves as the monthly bill to the customer. The carbon copy is retained and appropriate entry made thereon when the account is paid. In posting ledgers from the statements the automatic machine selects the proper columns for entries, automatically prints dates, adds debits, subtracts credits, and extends and proves a balance with each posting.

(6) *Credit check account.*—To show the amount of coupons issued, coupon sales, and coupons outstanding. This account will be debited with coupon sales and credited with coupons issued. The difference between the debit and credit entries will be the amount of coupons outstanding. If columns are provided therefor in the cashbook, total debit and credit entries at the end of the month or period may be made.

(7) *Bills payable.*—An account will be kept with each person or firm from whom merchandise is bought. Credit the account with all purchases made and debit the account with all payments made on account thereof. As stated above, in large exchanges, instead of keeping the accounts individually in the ledger, such accounts may be kept individually in the purchase-account book and, at the end of the month or period, the total debit and credit entries posted in the ledger.

(8) *Expense account.*—To show the cost of all expenses, such as wages, freight and express, fuel and lights, printing and stationery, telegraph and telephone, insurance, expendable supplies,

or any other expense attendant upon the business of the exchange. This account will be debited with all payments made on account of expenses as shown on the cashbook. Payments of expense may be subdivided, not only in this account but also in the ledger. Transportation should not be charged to operating expenses, but should be added to the cost of the merchandise or fixtures to which it pertains.

(9) *Dividend account.*—To show amount of dividends declared by the exchange council. When a dividend is declared the post exchange account is debited with the amount of the dividend declared and the dividend account credited. When the dividend is paid the dividend account is debited and the cash credited.

(10) *Buildings and fixtures account.*—To show all amounts expended for the betterment of the exchange property and depreciation of value of fixtures. This account will be debited with all expenditures for betterment, repairs, etc., and credited with all depreciation and all receipts obtained from sale of any articles pertaining thereto. Supporting this account is the list of exchange property available as an asset, kept in the stock record book (par. 31).

(11) *Profit and loss account.*—Into the profit and loss account are closed all accounts showing a profit or loss. It is debited for losses and credited for profits or gains. The difference between the two sides will show the net profit or loss and will be transferred to the post exchange account.

31. Stock record book.—*a.* The stock record book will be suitably ruled for and will show under their proper nomenclature all articles of merchandise on hand at the beginning of each month as shown by inventory, and all articles of merchandise received, sold, returned, condemned, and expended during the month. This book will also be suitably ruled for and will show the values at cost prices of all articles of merchandise on hand at beginning of month, for use in the "Merchandise account" (par. 30 *b* (2)), and, in separate columns, the values at selling prices of same and of all articles received, sold, returned, condemned, and expended during the month, for use in the audit (par. 70). If, in the opinion of the council, it is desirable that certain articles be sold in quantities at reduced prices, the stock record account will, in order to enable a proper audit to be made under paragraph 70, show the quantities to be sold at such prices as though they were different brands. For example, if it is desired to sell a certain brand of cigars at 10 cents each, two for 15 cents, or a box for $3, the stock record account will show so many "cigars (brand), singles," at 10 cents, so many "cigars (brand), twos" (or pairs), at 15 cents, and so many "cigars (brand), boxes," at $3. In order to prevent an unnecessary accumulation of stock, such quantities may be transferred from one such group to another by making proper adjustments.

b. In a suitable place in the stock record book there will also be entered a list of all exchange property available as an asset, such as buildings and fixtures, showing date of construction or purchase, quantity, original cost, and depreciation from time to time. The total money value of such property as shown in this list must always agree with the value of same as shown by the "building and fixtures account" in the ledger.

c. There will also be entered in a suitable place in the stock record book a record of the coupons received and issued by the post-exchange officer, as

required by paragraph 44. This record will show in one column all the coupons received, whether authenticated or not, and in another column all those issued by him, so that at any time it can be determined how many coupons should be in the possession of the post exchange officer.

32. **Bill register.**—The exchange officer will personally enter in a blank book, suitably ruled and labeled "Bill Register," a memorandum of every invoice, including the name of the firm from whom received, immediately upon receipt of the same, noting on the invoice "B. R. _____," to show page of entry. Date of receipt of the corresponding merchandise will be noted both on the invoice and opposite the proper entry in the bill register, and when the bill has been paid notation to that effect will be made both on the invoice and opposite the proper entry in the bill register. The outstanding liabilities on account of merchandise purchased, as contained in the financial statement of the exchange recorded in the council book, should agree with the total of all bills not marked "Paid" in the bill register.

33. **Invoice file.**—An invoice file book or file case will be kept. After entry in the bill register, an invoice will be placed in a temporary file labeled "Invoice File, Mdse. NOT Received," and will be kept therein until the corresponding merchandise shall have been received. Upon receipt of the merchandise it will be checked as to quantity, quality, and prices, against the invoice, which will then be placed in another temporary file labeled "Invoice File, Mdse. Received." From time to time the invoices in the latter file will be entered in the proper books and the place of entry noted on each invoice, after which they will be placed in the permanent file, properly labeled. When the bills are paid, the serial numbers of the checks used in payment thereof will be noted on the corresponding invoices, which, if used as vouchers to the cash book, will then be placed in the voucher file. If not so used, they will then remain in the permanent invoice file as supporting papers to the vouchers and will be so arranged that they may be readily located for use in connection with such vouchers during audits and inspections of the cash book.

34. Incoming mail.—*a.* The exchange officer will make effective arrangements to insure the receipt by him in person of all incoming mail for the exchange. Local conditions vary so greatly that the method adopted must be determined locally, but the exchange officer will be held personally responsible for the effectiveness thereof. Suggested methods are a post-office lock box or a locked mail pouch.

b. The exchange officer will either personally open all incoming mail or require it to be opened in his presence.

35. Other books and records.—Such other books and records as are deemed necessary to show stock on hand and value of exchange will be kept in the post exchange by the exchange officer or under his personal supervision.

SECTION VI

CREDIT

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36. **Granting of credit to enlisted men, general.**—*a.* Upon the recommendation of the council, approved by the commanding officer, credit may be given at an exchange to any soldier upon the recommendation of the company or detachment commander, to an amount not exceeding in any one month one-third of his month's pay, except that a noncommissioned officer of the first, second, or third grade may be allowed a credit account in an amount not exceeding in any one month the amount of his unencumbered pay for that month. Credit will not ordinarily be extended to a soldier between the date of last payment on rolls before discharge and the date of discharge. It will be given upon the request of the soldier, in writing. Soldiers granted credit will be distinctly informed that it is their duty to make prompt and unsolicited payment to the exchange officer on the next pay day. Defaulters will be debarred the privileges of the exchange.

b. No credit will be extended to enlisted men between the date of last payment, either full or partial, and the date of departure from the corps area when such credit would necessitate the entering of a charge on W. D., A. G. O. Form No. 24 (Service Record), for collection upon reaching the foreign service station, or the station in the United States, as the case may be.

c. Credit will not be extended to an enlisted man at a discharge and replacement depot or at a place of concentration until receipt of his service record thereat.

37. **Use of credit checks, general; restrictions.**—*a. Authority, how designated.*—The use of checks or coupons representing values and exchangeable for merchandise or other charges at an exchange is authorized. Such checks or coupons will be designated as "credit checks" or "credit coupons."

b. Restrictions.—Care will be taken that credit checks and coupons are not disposed of to unauthorized persons, and to provide against this, they will be redeemed in cash only when received from an activity authorized by the commanding officer to accept credit checks and coupons in lieu of cash.

38. **Use of metal credit checks not favored.**—The use of metal credit checks is undesirable for obvious reasons. The paper coupon-book system is the safest and most generally satisfactory. Although the first cost is greater than in the metal-check or punch-card system, the coupon-book system is usually economical in the end.

39. **Use of coupon books.**—The coupon-book system of extending credit to enlisted men will be used by all exchanges conducted at posts, camps, or stations where more than two organizations are stationed, except at tem-

porary stations and at places where conditions of service have made it impracticable to procure the coupon books. These coupon books will show the organization to which the enlisted man belongs and bear the name of the enlisted man to whom issued, and will be honored at the exchange only when presented by the enlisted man whose name appears on the book, except in the cases of those sick in hospital who are authorized to turn over the necessary credit slips to a chaplain, Red Cross representative or a surgeon to make and deliver purchases for them.

40. Requests for credit and action thereon.—*a.* The following form for requests for credit is convenient:

Company "....," "....." Infantry.

We request credit at the exchange during the month of ....., 192 , to an amount not exceeding that set opposite our respective names.

Fort .....

....., 192....

Names (In the order in which they appear on pay roll)	Credit approved	Credit given	Signature of soldier

Approved: .....

Captain ..... *Infantry*

Commanding Company .....

The foregoing form, duly completed, will be the authority upon which the exchange officer will extend credit. This form will usually be in the hands of the steward, or the assistant charged with issuing credit checks, to whom the men will apply for checks or coupon books. In large garrisons men unknown at the exchange will be identified before checks are issued. Upon applying to the steward or other proper assistant, each man will inform him of the number of checks or value of coupon book desired. This may be for the entire amount of authorized credit or for any less amount. The steward or employee will then make out a note in substantially the following form:

....., 192....	Fort ....., 192....
Name	I, ..., promise to pay to the Post Exchange, Fort ....., after my next payment ..... /100 dollars, for value received.
Grade, etc.	$.....
Amount, $.....	Signature ..... (When checks are issued)
	Grade, etc. .....
	Witness:
	....., *Steward.*

This note will then be signed and witnessed as indicated, after which credit checks equal in value to the amount signed for will be issued, and the amount will be noted opposite the name of the man on the company list. The correctness of the entry will be authenticated by the initials of the person making such entry on the company or detached list. By this means a man may obtain credit for any amount less than that authorized and subsequently may obtain the remainder, or any part of it, in a similar manner. The man's note received in return for credit checks will be the steward's voucher for the issue. A company commander may send such supplementary lists as he may desire, and at any time during the month may request a modification of the lists pertaining to his company. One great advantage of this system is that soldier may get any part of the authorized credit at any time within exchange hours during the month by applying directly to the exchange officer or steward.

b. An alternative method of regulation credit sales is as follows (notes of the following form are kept on hand by the organization commander):

....., 192....	Fort ....., 192....
Name	I, ..., promise to pay to the
Grade, etc.	Post Exchange, Fort ....., after my next payment
Amount $.....	..... /100 dollars, for
	value received.
	$.....
	Signature ..... (When checks are issued)
	Grade, etc. .....
	Witnesses:
	..... First sergeant company
	.....
	..... Commanding company
	.....

Upon the presentation of such a note at the exchange, credit checks for an equal amount will be issued to the soldier who will receipt therefor. Stubs will remain in possession of the organization commander, who thus knows the state of the man's credit at all times without reference of the matter to the exchange.

41. Payment of notes due.—*a. At pay table.*—Before payment of the command the notes of each organization will be arranged in the order in which names appear on the pay roll. When more than one note has been given by the same soldier they will be pinned together and the total marked with colored pencil on the top note. These notes, in connection with the list or lists showing the credit given to the men of each organization, give all information needed for the collection. The exchange officer will be present at the place of payment to receive the men's payments on their notes or, in case of large commands, he may make, with the approval of the commanding officer, such other arrange-

ments as will facilitate the payment. A noncommissioned officer of each organization will be detailed to report to the exchange officer at the pay table to identify the men. See also paragraph 1c, AR 35-2320.

b. When overdue, or due from soldier about to be discharged.—When the debt has remained unpaid for one pay day on which the soldier was paid a balance sufficient to discharge such debt, the note covering same will be turned over to the soldier's organization or detachment commander, and the amount of the note debited against the account of the organization for collection from the first dividends due that organization. The soldier's note then becomes a debit due the company fund and will be entered on the next pay roll of the organization as "Due Company Fund." In case of discharge of a soldier the amount of any such indebtedness will be noted on the final statement as due the post exchange or company fund and will be deducted from payment made thereon. On making such a deduction the paying officer will turn over the amount collected to the post exchange officer, or the organization commander, who will receipt to the paying officer and the soldier for the amount so received.

c. When due from deceased soldier.—The amount due an exchange by a deceased soldier is a debt, and constitutes a proper claim against his estate, and may be legally deducted from the pay and allowances due the same. Exchanges having claims against a deceased soldier will file them directly with the General Accounting Office, Military Division, Washington, D. C.

d. Desertion or dishonorable discharge.—Indebtedness of deserters and soldiers sentenced to dishonorable discharge is paid at the time payment is made by disbursing officers, to the extent of credits available therefor, on supplemental pay rolls required by paragraph 5*d* (3), AR 354-155, and claims will not be submitted to the General Accounting Office in such cases.

42. Stoppages against enlisted men.—Debts due an exchange can be collected from any balance due the soldier only after stoppages for debts due the United States have been satisfied. Travel pay due a soldier on disharge can not be stopped to satisfy a debt due an exchange. Where it clearly appears that a soldier is indebted to an exchange, such exchange may be reimbursed the amount of such indebtedness from the amount of pay and allowances reserved by section 4818, Revised Statutes, from stoppages and fines adjudicated by sentence of courts-martial for the reimbursement of the Government and of individuals. In case of a deserter (as well as in case of a discharged or deceased soldier) who is known to be justly indebted to an exchange, a stoppage not exceeding the amount of credit authorized in the regulations may be lawfully made in favor of the exchange.

43. Distribution of losses.—*a. In case of failure of soldier to pay obligation.*—The amount of any loss that an exchange may sustain in consequence of the failure of a soldier to pay for anything bought on authorized credit, whether by his discharge without sufficient money due on his final statements or by his desertion, or otherwise, will be charged against the membership account of the company or detachment to which the man belongs. On the next distribution of profits, the man's notes will be turned over to the company or detachment commander as part payment on the company's or detachment's share of the dividend.

b. In case of fire, etc.—Losses by fire or other casualty, worthless accounts, except those of soldiers referred to in *a* above and in paragraph 8*e*, depreciation of value of fixtures, deterioration of articles kept for sale, and the accidental

breakage of fixtures or other property will be borne in common by all the participating organizations.

44. **Responsibility for credit checks.**—Credit checks or coupons are, when properly authenticated, as valuable as cash. The exchange officer, on taking charge of an exchange, will verify the amount of credit checks or coupons turned over to him, and thereafter will carefully keep an account of receipts and issues. When metal credit checks or paper coupon credit checks are used they will be carefully accounted for by both the exchange officer and the exchange steward. The former will keep an accurate account of the value of both of those turned over by him to the steward for issue and those issued by the steward as shown by his daily report. The balance of credit checks or coupons outstanding will be regarded as a liability until redeemed. The steward will charge himself in his account with the value of all credit checks or coupons turned over to him by the exchange officer, and will credit himself with the value of those issued by him. All credit checks or coupons received from sales will be turned in to the exchange officer with the steward's daily report and their total value thereon verified by the exchange officer. All paper coupons so turned in will be destroyed by the exchange officer in person, preferably by burning. The stewards credit check account need not show the value of the credit checks or coupons outstanding, as this may at once be determined by balancing the credit check or coupon account of the exchange officer.

45. Credit accounts.—*a. How carried.*—Credit accounts are carried as bills receivable until they are settled or found to be a loss.

b. Action when overdue.—Monthly credit accounts of officers and others remaining unpaid on the 10th of the month following that for which they are rendered will be reported by the exchange officer to the commanding officer with a view to having the accounts settled.

SECTION VII

MISCELLANEOUS

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46. **Government funds for post exchanges.**—Buildings have been constructed and recreational activities set up at posts, camps, and stations, and both main-

tained from funds made available by the War Department. The amount of funds so made available is normally dependent on the amount included in the item, "Military Post Exchanges," in the appropriation act for the fiscal year. The language of the item generally includes the following:

> For continuing the construction, equipment, and maintenance of suitable buildings at military posts and stations for the conduct of the post exchange, school, library, reading, lunch, amusement rooms, for the conduct and maintenance of hostess houses, chapels, and gymnasium, including repairs to buildings erected at private cost, in the operation of the act approved May 31, 1902, for the rental of films, purchase of slides, supplies for and making repairs to moving-picture outfits and for similar and other recreational purposes at training and mobilization camps now established, or which may be hereafter established, * * *. *Act June 30, 1921 (42 Stat. 83).*

47. Local provision for exchange building.—*a.* At posts where exchange buildings have not been provided from funds made available under the provisions of paragraph 46, the commanding officer will set apart for the use of the post exchange any suitable public building or rooms available, or with the approval of the War Department he may authorize the renting of any private building or part thereof on the reservation, the rental to be paid from the funds of the exchange, or, when sufficient post exchange funds are available and are so appropriated by the exchange council, the commanding officer may authorize a suitable temporary building to be erected for the purpose. When a temporary building is constructed wholly or in part by the labor of troops for the use of an exchange, the commanding officer is authorized to use the necessary teams and such tools, windows, sash, doors, and other material as may be on hand and can be spared by the Quartermaster Corps; but no permanent structure will be erected on a reservation without first obtaining the authority of the Secretary of War. When governmental assistance is not rendered, the cost of post exchange buildings and their maintenance will be paid from post exchange funds.

b. When troops who have established a temporary building for a post exchange from post exchange funds are transferred to another post, incoming organizations using the building thus established will pay an equitable sum for its use, but in no case a total sum greater than the cost of construction.

48. Funds for establishing.—*a.* The expense of fitting up the quarters of an exchange and procuring the necessary articles for the first stock and fixtures will be met by assessment from the funds of the several organizations which make up the membership of the exchange, or these will be contracted for, or procured on credit. When procured on credit, the bills will be paid from the first profits. The post exchange is responsible for the debt, and not the Government. This will be made perfectly clear to those extending credit.

b. The funds for the establishment of exchanges in the field will be drawn from the funds of participating organizations. Such funds will normally originate in large part from the liquidation of interests in exchanges at the home station of such organizations. A reasonable proportion of the funds of organizations will, therefore, be held available for the establishment of field exchanges. The sum thus held will normally be not less than one dollar ($1) for each man of the authorized strength of the organization.

49. Services for Government, prohibited.—The practice of obtaining occasional services for the Government from post exchanges, post laundries, and

other quasi public agencies that are established and maintained at military posts by the authority of the War Department, is authorized only in cases in which services of the same class can not be as conveniently or reasonably obtained elsewhere and where a direct advantage will accrue to the Government from the method resorted to. In no case will a post exchange or post laundry be permitted to enter into public competition or to submit bids in response to advertisements calling for proposals for furnishing supplies or services. When accounts are submitted for purchases of the kind described above the vouchers will contain a full statement of the grounds upon which the purchase of supplies or the procurement of services was based and will fully set forth all the circumstances of the transaction, with a view to enabling the proper bureau of the War Department and the General Accounting Office to determine whether the purchase was in the public interest. Public funds received for such services will be taken up in the accounts of the post exchange or post laundry and will be accounted for in the manner prescribed for such accounting.

50. **Sale of beer, wine, or intoxicating liquors.**—The sale of, or dealing in, beer, wine, or any intoxicating liquors by any person in any post exchange or canteen or Army transport, or upon any premises used for military purposes by the United States, is prohibited. Commanding officers will carry the provisions of this paragraph into full force and effect, and will be held strictly responsible that no exceptions or evasions are permitted within their respective jurisdictions.

51. Purchases.—*a. For the exchange.*

(1) Except as authorized by (2) below, all purchases of merchandise or other property for the exchange will be made by the exchange officer, who will notify all firms and individuals from whom such purchases are made that the exchange will not be liable for the payment of any bills for such merchandise or other property purchased by any other than the exchange officer in person, and that the original invoices pertaining to any such purchases must be mailed direct to the exchange officer.

(2) Exceptions to the requirements of (1) above will be made only when it is impracticable for the exchange officer to make advantageous purchases in person, e. g., from a traveling salesman who habitually visits the exchange during the absence of the exchange officer at drill or other duty, in which case purchases in limited quantities may be made by the exchange steward if authorized to do so by the exchange officer, with the approval of the exchange council and the commanding officer.

(3) Purchases made verbally by the exchange officer and those made in exceptional cases under (2) above will be confirmed in writing by the exchange officer as soon as practicable after such purchases are made.

b. For concessionaires.

(1) Merchandise needed by concessionaires in the operation of their concessions will not ordinarily be purchased for them by the exchange, but if deemed desirable to do so for any special reason the merchandise may be purchased by the exchange on its own account and then sold to the concessionaire.

(2) A concessionaire is in no sense an agent of the exchange and should not be permitted to represent himself as such to the public, e. g., by the use of the words "Post Exchange" on letter or bill heads or on signs.

(3) Commanding officers will exercise such supervision of the activities of concessionaires as will prevent the exchange from becoming involved in any controversy as to its responsibility or liability for debts contracted by concessionaires.

c. In considerable quantities.—When it is desired to buy articles in considerable quantities, the exchange officer will first obtain the approval of the exchange council.

d. Delivery and accounting for.—All goods purchased on account of an exchange will be delivered to it and properly accounted for on its books.

e. Contracts.—Contracts for supplies or merchandise once entered into between the post exchange and civilians will not be canceled except by mutual consent or in accordance with a provision of the contract. Whenever contracts or agreements for purchases are made by a post exchange which by reason of change of station of the organizations holding membership therein or other cause are changed, new contracts or agreements by their successors must be made if desired. All contracts or agreements entered into by post exchanges will contain a provision that in case it is necessary to close the exchange by reason of a change of station or otherwise all contracts or agreements entered into shall be canceled.

f. Articles obtained from the Quartermaster Corps.

(1) Commanding officers will regulate the purchase and resale of articles obtained from the Quartermaster Corps. The quartermaster is authorized to sell to the exchange at cost any subsistence stores except exceptional articles (AR 30–2200). In reselling such goods in their original forms no profit will be made by the exchange beyond the fractions of cents necessary to make change, and no such articles will be sold to civilians not authorized to purchase subsistence stores under the provisions of paragraph 2*a* (2) (*j*), AR 30–2200.

(2) A post exchange may purchase, upon the certificate of the officer in charge that they are for sale only to enlisted men of his post, in such quantities as are needed by them, the following articles of uniform clothing:

Belts, waist.	Laces (all kinds).
Chevrons (all kinds).	Leggings, canvas.
Cords:	Insignia, cap and collar.
Hat.	Stockings.
Tying, for service hats.	

Selling (except by the post exchanges) or bartering these articles purchased or drawn from the Quartermaster Corps is forbidden.

g. Federally inspected meat and meat food products.—See paragraph 4, AR 40–2150.

52. **Advice by finance officers.**—Locally available officers of the Finance Department may be consulted, and when so consulted will give advice on the financial conduct of post exchanges.

53. **Copy of financial statement to be exhibited.**—A copy of the monthly financial statement (less exhibits), with the commanding officer's action noted thereon, will be exhibited in one of the rooms of the exchange during the ensuing month.

54. **Cashing of final statements.**—*a. General.*—Post exchanges are prohibited from cashing final statements of discharged soldiers unless a finance officer is not readily accessible. No charge will be made for the accommodation, but to insure against loss due to error a part of the value of the final statement will be retained until the account is paid. The amount retained, less the cost of the transaction, will be transmitted to the soldier as soon as the actual state of the account is known.

b. Exchange not liable for overpayment.—An exchange assumes no liability for errors for overpayments to soldiers made by finance officers, the liability resting on the officer who signs the final statements or the finance officer who pays them, according to the source of the error.

55. **Payment for telegraph service.**—The telegraph expenses of a post exchange will be paid by the post exchange as an item pertaining to the cost of maintenance thereof, except that messages on post exchange business over telegraph, radio, and cable lines owned and operated by the War Department may be transmitted without charge, provided that any charges accruing on commercial connecting lines will be paid by the post exchange in whose behalf the message is sent or received.

56. **Responsibility for loss of funds.**—*a.* Post exchanges being agencies of the Government, the duties imposed upon officers in the management of exchange affairs are as binding upon them as any other duty to which they may be assigned under competent military authority and when the property or funds of an exchange are lost through mismanagement or neglect of the exchange officer or any members of the exchange council, or both, the least that can or should be exacted in the public interests is that the exchange officer and any members of the exchange council, responsible therefor, should make good the loss. *See Dig. Ops. J. A. G., 1912–1917, p. 474.*

b. In case of loss of post exchange funds or property the circumstances will be carefully investigated and reported upon by a board of three disinterested officers appointed by the post, camp, coast defense, or station commander. The board making the investigation will include in its report its opinion as to the responsibility for the loss and a recommendation as to appropriate action for the decision of the corps area commander.

57. **Reorganization.**—*a. General.*—Whenever the exchange council, by a majority vote, holds that a reorganization of the exchange is necessary, and that the interests of the exchange can best be subserved by this course, the proceedings of the council in such case, when approved by the commanding officer, will be forwarded to the corps area commander, whose decision thereon will be final.

b. Procedure.—If the proceedings are approved by the corps area commander, all members will withdraw from the exchange at the earliest possible date after the receipt of the approved proceedings at the station and the reorganization will be made effective without unnecessary delay.

58. **Final liquidation.**—When notice is received that an entire garrison of a post, camp, or station is to be withdrawn and the garrison discontinued, the merchandise stock of the post exchange will be reduced to the lowest extent

possible and, as far as may be possible, converted into cash. Prior to the departure of the troops the property of the exchange will be sold and the proceeds distributed by the council among the organizations owning stock therein according to the number of shares held by each. The exchange officer will make a final report of the closing out of the exchange, through military channels, to the corps area commander. Under the above circumstances, the liquidation of an exchange will be as gradual a process as practicable. Prior to all sale of stock at a sacrifice, the personnel of organizations participating in an exchange will be given an opportunity to buy at reduced prices. All stock and fixtures not otherwise disposed of and which can not be carried by outgoing organizations will be disposed of at public sale prior to departure of the final organization concerned in the movement of troops.

59. **Government supplies authorized.**—*a.* Heating and the issue of suitable apparatus therefor for any room, rooms, or building used by the exchanges is authorized in AR 30–1620, except that this does not include fuel for cooking and all other profit-making activities, the cost of which will be paid for by the exchanges.

b. The Quartermaster Corps will provide supplies for interior and exterior illumination. The necessary lights will be supplied for all public buildings for which illumination is required in order to make proper use of the buildings.

c. Commanding officers may, when necessary, order the issue of the necessary quantity of concentrated lye and Sapolio for buildings heated by the Government and not thus provided for. The use of concentrated lye upon floors and woodwork is forbidden.

60. **Repair of unserviceable books.**—Valuable books pertaining to a post library which have become unserviceable by fair wear and tear will, when practicable, be repaired and the cost of repair will be a proper charge against the funds of the post exchange.

61. **Reimbursement for loss of mail or express.**—See paragraph 10*b*, AR 210–50.

62. **Seeds for post gardens.**—Seeds for post gardens may be procured from post exchange funds, or from company funds.

63. **Automobiles.**—*a.* The commanding officer may authorize the purchase and use of automobiles by a post exchange, when justified by the necessities of the command.

b. When so used, they will not be permitted to compete with civilians by carrying persons not employed in the post.

64. **Stoppages.**—Authorized stoppages for amounts due post exchange will be entered on the pay rolls and deducted at times of payment.

65. **Sale of unauthorized uniform clothing prohibited.**—Articles of outer uniform clothing, including insignia, which do not conform to the types prescribed for wear by Army Regulations, will not be sold in post exchanges.

66. **Prompt payment of bills.**—Bills will be paid promptly, so that advantage will be taken of all cash discounts.

SECTION VIII

AUDITING

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67. **General.**—The council member detailed to make the monthly audit for the exchange council will examine the accounts of the post exchange in accordance with the provisions of paragraphs 68, 69, 70, and 71.

68. **Cash and cashbook.**—*a.* Count cash on hand. If checks are with the cash, they should be current ones and should be immediately deposited.

b. Verify bank balance. Obtain a list of outstanding checks and secure direct from the depository confirmation of the bank balance.

c. Verify all additions in the cashbook. Call for steward's daily report and see that all cash items are shown on the cash book and that other items are properly accounted for.

d. Compare paid checks with stubs and the latter with the vouchers and disbursements shown by the cashbook. For all disbursements there should be a proper voucher. In case of a bill or invoice being paid that represents a purchase, it should show on its face proper notations to indicate when the goods or materials were received; that they were properly checked as to quantities, quality and prices; that they have been taken up on the books and that the voucher is correct and just.

69. **Ledger.**—*a.* Verify trial balance with ledger.

b. Postings to individual accounts in ledger should be checked against the cashbook to see that all receipts on account of credit accounts and sales have been taken up.

c. Count bills receivable (enlisted men) on hand and compare with amount shown on ledger that should be on hand. Verify whether all issues and payments to the account have been posted.

d. Check the closing entries to profit and loss account. See whether the net profit or loss is shown on the exchange account in ledger.

e. Check all postings to ledger.

70. **Stock record.**—Verify accuracy of stock record account as shown by stock record book. To the value at selling prices of merchandise on hand at beginning of month as shown by inventory, add the value at selling prices, of all merchandise purchased. This gives the total accountability. To the value, at selling prices, of all merchandise sold, returned, expended, and condemned, add the value, at selling prices, of all merchandise on hand at close of month, as shown by inventory. This gives the total credits. Subtract the total credits from the total accountability, report the results of the verification to the exchange council for action in case of discrepancies, and include results in certificate of audit in the form prescribed by paragraph 16*c*(6)(*d*), for the information of the commanding officer. Similarly verify as far as possible the accounts of all other activities (par. 5), investigating such activities from the standpoint of efficiency, the methods used, prices charged, consumption by employees, unit quantities produced by breaking up larger units (e. g., number of glasses of sodas from a gallon in bulk, number of sandwiches from a pound

of ham—a loaf of bread), system of accountability required for such smaller units, and such other matters as the investigation may develop. A report of conditions found and conclusions as to the efficiency of the operation of these activities will be submitted to the exchange council and will be embodied in the council proceedings together with a statement of the action pertaining thereto taken by the council. The verification and the investigation pertaining to such activities as prescribed herein may, at the option of the commanding officer, be delegated to an assistant auditing officer, who shall also be a member of the council.

71. **Miscellaneous.**—*a.* Verify check account to see the amount outstanding. Any balance should always appear as a liability.

b. Examine expense account and see that all expenditures were proper.

c. Obtain a list of accounts due the exchange and a list of outstanding liabilities. Verify—

(1) The completeness of same by examination of such records as ledger and bill register to insure that it includes the names of all firms and individuals with whom the exchange deals.

(2) The accuracy of same by direct confirmation, so far as practicable, with individuals and firms concerned, regardless of whether or not the balances for the month as indicated by the records are zero.

Check totals with a statement of assets and liabilities. The next auditing officer should ascertain whether any of these accounts have been settled since last audit and properly entered on the books of exchange. Make special notation of delinquent accounts due the exchange.

d. Verify all items on statement of assets and liabilities with ledger accounts, inventories, and other records, and be certain that the several items shown on the statement are correct and just.

SECTION IX

DECISIONS

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72. **Post exchange funds.**—*a.* Funds of a post exchange, although not public moneys within the meaning of sections 5488, 5490, and 5492 of the Revised Statutes, are intrusted to officers of the Army in their official capacity, and their misapplication is punishable under the Articles of War. When practicable, such part of them as is not required for immediate use should be deposited in a bank. For an officer in charge of a post exchange to lend its money to anyone would be a gross breach of trust.

b. Liability of exchange officers for loss by post exchange.—The division exchange officer and the exchange officer of a post exchange allowed the exchange steward to have the combination of the safe. The latter stole over $400 from

the safe and deserted. *Held*, that this was a violation of the Post Exchange Regulations, which provide that no employees shall have access to the cash of the exchange after it has been turned over to the exchange officer, and that the two officers who joined in such violation should bear the loss equally. *See Dig. Ops. J. A. G., June 15, 1918.*

c. An exchange officer who uses funds of the exchange in the cashing of checks does so at his peril and is responsible for any resulting loss.—An exchange officer cashed three checks which were returned with a notation thereon "not sufficient funds." A letter was addressed to the drawer of the checks, but no answer thereto was received. The action of the drawer of the checks does not constitute fraud against the exchange. The funds of the exchange, when not in use for proper exchange purposes, should be kept in a bank and not loaned or used to cash private checks and the exchange officer was without authority to cash any checks out of such funds; having done so, he assumed the risk of loss. The Government is not interested in any proceedings to recover the money or to prosecute the drawer of the checks. *Dig. Ops. J. A. G., May 17, 1919.*

d. Liability of post exchange on account of forged draft cashed by exchange officer—Post exchange; acceptance and negotiation of forged draft.—By indorsing and negotiating a forged draft, a post exchange contracts that it has lawful title thereto and the right to transfer said instrument. It thereby becomes liable to subsequent holders in due course for the face value of the bill, and the bank upon which said draft is drawn has a valid claim against the post exchange for reimbursement of the amount paid by said bank to a holder in due course. The exchange may assert its claim against the exchange officer through whose error the loss arose, but no claim can be enforced against the Government. *Ops. J. A. G., October 4, 1919.*

e. Company exchange; financial responsibility for loss caused by officer's negligence.—The post exchange officer is financially responsible for the loss of money by theft which was taken from an unlocked counter drawer where it had been placed by the exchange steward, for the reason that he failed to take over the post-exchange money from the steward on the night in question, as required by regulations. *Ops. J. A. G., October 28, 1919.*

f. Assessment of damages under the one hundred and fifth article of war against a post exchange when the actual wrongdoer can not be identified.

(1) When damages are to be assessed against soldiers under the one hundred and fifth article of war, where the board finds that the damages were committed by soldiers belonging to the command, but is unable to locate the responsibility more definitely, i. e., the particular soldiers who were the wrongdoers, or the particular organization to which they belong can not be determined, the damages may be collected from the proceeds of the post exchange in which the entire command is interested. *Ops. J. A. G., May 29, 1918.*

(2) Until the board of officers finds that damages to private property were caused by soldiers of the post, and that the organization or organizations to which they belong can not be ascertained, post-exchange funds can not be used in the payment of such claims. *See Ops. J. A. G., November 6, 1919.*

g. Use of funds.

(1) The "recreation fund" defined in paragraph 3 *e*, AR 210–50, which is a fund set aside by the post exchange under paragraph 8 *d*, (2), AR 210–65, for the education and recreation of the enlisted men of the command, may not properly be used for the construction and maintenance of an officer's club. *See Ops. J. A. G., August 20, 1925.*

(2) * * * The uses of post exchange profits authorized by * * * regulations * * * can not be held to include expenditures for the improvement of roads, however beneficial to the garrison. *Ops. J. A. G., January 14, 1925.*

h. Liability of exchange council.—* * * Where losses extending over a period of two years were caused by neglect and mismanagement, held, that the post exchange council as well as the exchange officer should be held responsible for it. *Ops. J. A. G., April 14, 1910.*

i. Liability for loss; general.—For further discussion of this subject see Digest of Opinions, J. A. G., 1912, pages 638–640.

73. **Penalty envelopes.**—*a.* The use of penalty envelopes by officers in charge of post exchanges in conducting correspondence of post exchanges is permitted for all correspondence relating to the conduct of the business thereof, but must not be extended to the carrying of merchandise.

b. Held that penalty envelopes can not be inclosed by an officer in a letter to contractor for use in returning signed vouchers. *Ops. J. A. G., June 22, 1907.*

c. The use of the penalty envelope will be strictly limited to the proper correspondence of the exchange, and will not be used in soliciting custom nor in the delivery of goods.

74. **Stoppages for debt.**—*a. Stoppage of pay of enlisted men for debt due the post exchange.*

(1) Stoppages of pay of enlisted men for debts due the post exchange are only authorized in the settlements of such debts by the finance officer when making payments to enlisted men. Such debts can only be collected from any balance due the soldier after stoppages for debts due the United States have been satisfied.

(2) Travel pay due a soldier on discharge can not be stopped to satisfy a debt due the post exchange.

(3) The amount due the post exchange by a deceased soldier is a debt, and constitutes a proper claim against his estate, and may be legally deducted from the pay and allowances due the same. Post exchanges having claims against a deceased soldier should file them directly with the General Accounting Office.

(4) I am of the opinion and so decide, that where it clearly appears that a soldier is indebted to a post exchange, such post exchange may be reimbursed the amount of such indebtness from the amount of the pay and allowances reserved by section 4818, United States Revised Statutes, from stoppages and fines adjudicated by sentence of courts-martial for the reimbursement of the Government and of individuals. *Decision of Comptroller of the Treasury.*

(5) Section 4818, United States Revised Statutes, provides: "For the support of the Soldiers' Home the following funds are set apart, and are hereby appropriated:

"All stoppages or fines adjudged against soldiers by sentence of courts-martial, over and above any amount that may be due for the reimbursement of Government or individuals. * * *"

(6) In case of a deserter (as well as in case of a discharged or a deceased soldier) who is shown to be justly indebted to the post exchange, a stoppage not exceeding the amount of credit authorized in the regulations may be lawfully made in favor of the post exchange. The decision of April 22, 1902 (21 MS. Comp. Dec. 324), is overruled. *21 Comp. Dec. 109.*

b. Collection of money due from deserter to company fund and exchange.

(1) The pay and allowances forfeited by a deserter by reason of his desertion, which are payable to the United States Soldiers' Home, is that amount to which the soldier would have been entitled had he remained in the service, i. e., whatever sum would have been due him after the payment of his just obligations to the United States and to Government agencies. (See 21 Comp. Dec. 109.) Sums due to the company fund and to the exchange, incurred in accordance with the regulations, are payable from any balance found due him at the time of his desertion, after deducting therefrom any sum in which he may have been indebted to the United States. (Ops. J. A. G., June 26, 1918.) See paragraph 2, AR 35-2440.

(2) The maximum of "one-third of his monthly pay" fixed by the regulations of the War Department as the amount of credit to which an enlisted man may be entitled in any one month at the Army post exchange is measured by the amount of pay the enlisted man would be entitled to for a full month according to his grade and length of service, although he may have actually served only a portion of the month. *3 Comp. Gen. 518.*

(3) See also paragraph 41 *c* and *d*.

75. **Post exchange as agent for laundry.**—*a.* Post exchanges can not act as agents for private laundries, for a soldier's pay can not be stopped to satisfy a claim of a private person or business concern. There is no legal objection to the post exchange hiring the laundering done by a private laundry, thus becoming the real customer of the laundry, and, in turn, charging the men just and reasonable rates for having their washing done. *Ops. J. A. G., November 8, 1917.*

b. In case of nonpayment by enlisted men for laundry work contracted for as authorized in *a* above, the pay of the defaulters may be stopped to satisfy their indebtedness to the exchange.

c. Work done for hospital.—* * * Held, that under Circular No. 29 W. D., 1923, the post exchange might enter into a contract with a civilian laundry to do the hospital laundry work, the cost to the Government being no greater than if the hospital should deal directly with the laundry, and the profit made by the post exchange being eventually shared by all the military organizations on the post, including the hospital. *Ops. J. A. G., September 29, 1923.*

76. **Sales of forage to civilian polo teams.**—Sales of forage to civilian polo teams may be met by local post exchanges purchasing forage, other than Government forage, for sale to visiting polo teams.

77. **Taxes.**—*a. Liability of post exchange to Federal taxes.*—Post exchanges are not liable to the income tax imposed by section 10, war revenue act of October 3, 1917 (40 Stat. 300, 333). While they are, in a sense, associations of military organizations for business purposes, they are nevertheless Government agencies or instrumentalities expressly recognized by Congress in the annual Army appropriation acts, and they are designed to carry out a Government purpose. It has never been the policy of the Government to tax its own enterprises or its own manner or method of doing business. (*Dugan* v. *United States*, 34 Ct. Cls. 458.) For the same reason neither post exchanges nor officers in charge thereof are liable for the payment of the internal revenue tax for the sale of tobacco imposed by the act of October 22, 1914 (38 Stat. 745, 752). Post exchanges are, however, subject to the stamp tax imposed by said internal revenue act (38 Stat. 763) and accordingly they are not permitted to sell articles of merchandise on which special tax stamps are required until such stamps have been affixed. A post exchange is also subject to the freight tax imposed by sections 500, 501 of the war revenue act of October 3, 1917 (40 Stat. 300, 314), since transportation service rendered to a post exchange is not service rendered to the United States within the exception contained in section 502 of said act. *Ops. J. A. G., April 9, 1918.*

b. Liability of post exchange to tax on admissions to places of amusement.—Post exchanges are conducted solely for the benefit of enlisted men under the supervision of the Government. No part of the proceeds derived from admission fees at places of amusements conducted by post exchanges is payable to any individual, but the entire amount thus collected is used for the benefit of enlisted men in the military service. The Commissioner of Internal Revenue construing the war revenue act of October 3, 1917 (40 Stat. 300, 318), has issued instructions that no tax should be collected for admissions to places of amusement operated by or under the supervision of the Government where no part of the proceeds is payable to individuals, but all such proceeds are exclusively for the benefit of persons in the military service. Consequently the admission fees at places of amusement conducted by such post exchanges are not subject to the war tax on admissions provided for by section 700 of said act. *Ops. J. A. G., May 17, 1918.*

c. Floor tax on tobacco.—Government agencies, such as post exchanges, are required to pay floor tax on tobacco under section 702 of the revenue act of February 24, 1919 (Pub. No. 254, Sixty-fifth Congress, p. 68). (See Dig. Ops. J. A. G. 1917, p. 459.) *Ops. J. A. G., February 28, 1919.*

d. Internal revenue on soft drinks sold at Government agencies.—As the Treasury Department has ruled in a decision dated July 24, 1919, T. D. 7, I. R. 2893, p. 31, the sales of ice cream and soft drinks sold by a municipality, post exchange, the Red Cross, or similar institutions are subject to the tax imposed by the act of February 24, 1919, 40 Stat. 1057, 1116, as the tax falls directly upon the purchaser; and this is not necessarily in conflict with the opinion of this office. *Ops. J. A. G., April, 1919, p. 181.* Since the Treasury Department is charged with the administration of the law its rulings should prevail until reversed by proper authority. *Ops. J. A. G. Aug. 23, 1919.*

e. Automobile livery business.—The tax imposed by subdivision 11 of section 1001 of the revenue act of 1921 on "persons carrying on the business of operating or renting passenger automobiles for hire" is not upon automobiles but upon the privilege of engaging in the automobile livery business. Military organizations owning automobile trucks purchased from their own funds and operating same for their own convenience and on Government business are not taxable thereunder, though a small charge is made for carrying members of such organizations to and from near-by towns, the receipts going to organization funds. *Ops. J. A. G., October 6, 1924.*

f. State taxes.—Generally, the exacting from the Federal Government of a State tax imposed on purchaser even if delivery takes place within the State, as distinguished from delivery on a reservation exclusively under Federal jurisdiction, is illegal, as infringing the right of the United States to exemption of its property and instrumentalities from all State taxation. (See 1 Comp. Gen. 229.) No such condition arises, however, where a State law imposes a tax on the dealer and such tax is included in the purchase price which the Government pays. (See 1 Comp. Gen. 584; 3 ibid. 781; 4 ibid. 1041; 5 ibid. 1022.) A post exchange is not legally liable for local or municipal taxes or licenses on the sale of commodities for the exclusive use of persons in the military service, as such exchange is an instrumentality of the Government of the United States. *Ops. J. A. G., November 21, 1899.*

78. Bus lines.—The operation by a post exchange of a motor-bus line is not an activity authorized by * * * post exchange regulations, * * * but, if its operation is authorized by the War Department, there is no legal objection thereto. *Ops. J. A. G., November 28, 1919.*

79. Subsistence supplies.—A post exchange can not legally sell at a profit food supplies obtained by it from the Quartermaster Corps where the form of such supplies is not changed by the post exchange. The only authority for the sale of such supplies by the Quartermaster Corps to a post exchange is the statutes authorizing the sale thereof to officers and enlisted men. (R. S. sec. 1144; Id. sec. 1145; 28 Stat. 658; 23 Stat. 107, 108.) Hence they can be sold to a post exchange only on the theory that the exchange acts as an agency for their distribution to officers and enlisted men at cost price. Where, however, the form of the supplies is changed by the post exchange by converting ingredients into pastries, etc., they may be sold at a profit. *Ops. J. A. G., January 28, 1919.*

80. Post exchange buildings.—*a. Title; revocable license.*—An Infantry regiment obtained due oral permission to erect and maintain an exchange building at a cantonment and to dispose of it in case of removal. Subsequently the camp commander ruled that on leaving the camp the organization must leave the building as a part of the camp property belonging to the Government. The question of title of the building under the oral license to build is a question of intent of the parties. Here the building apparently belonged to the organization that, with due authority, constructed it, and it has under the license power to sell and remove the same. Orders of the camp commander are without effect in so far as they purport to diminish the title and power of the organization in the matter of the exchange building. But the permit or license is necessarily revocable, and the camp commander may order the removal of the building at any time. *Ops. J. A. G., August 10, 1918.*

b. Buildings constructed by post exchanges; disposition.—Certain buildings erected by the post exchange upon Ellington Field, Tex., solely at the expense of the exchange, remain its property, and they may be sold by the exchange when it has no further use for them. The purchaser may remove the buildings from the reservation. The permission of the post commander is sufficient authority for their sale and removal. *Ops. J. A. G., January 22, 1919.*

c. Expenditure of profits from post exchanges for operation of barber shop.—Expenditure of the profits from a post exchange for the purpose of improving facilities for the operation of the barber shops by way of alterations and extensions of post exchange buildings and acquisition of necessary supplies for carrying on the business is a proper use of the post exchange funds, and such use is authorized by the Post Exchange Regulations. * * * *Ops. J. A. G., September 19, 1918.*

d. Removability of regimental exchange building.—A building was erected by a regimental exchange upon the understanding that it was to be the property of the exchange and to be disposed of by the exchange as its own property when the regiment should leave that post. The division commander thereafter directed that all buildings or structures on the reservation used for military purposes in connection with the camp should become the property of the United States, whether erected by persons in the military service or otherwise. The order was without effect, and the regimental exchange had authority to sell the building and give to the purchaser a good title thereto. The division commander, of course, had power to regulate its use or to require its removal from the reservation at any time. (See Dig. Ops. J. A. G., 1917, p. 473.) *Ops. J. A. G. October 1, 1918.*

81. Miscellaneous decisions.—*a. Issue of corn brooms and mops.*—A post exchange is not entitled to the issue of corn brooms and mops.

b. Membership not obligatory.—Membership in the post exchange is not obligatory on the units which go to form a garrison. *Decision of Acting Secretary of War, April 20, 1908—1366931 A. G. O.*

c. Receiving compensation.—It is highly improper for a post exchange officer to receive compensation from the post exchange fund for his service as such. *Secretary of War, August 8, 1911.*

d. Suit by or against post exchange; United States attorney to defend any litigation.—It is not the policy of the War Department to interfere in the contractual relations between post exchanges and their creditors where there is a bona fide dispute which appears to be a proper case for judicial determination * * *. (Ops. J. A. G., January 2, 1917.) * * * Litigation on behalf of the post exchange should be in the name of the exchange officer as exchange officer and on behalf of the exchange. (Ops. J. A. G., March 1, 1906.) Under A. R. 996 a post exchange officer is entitled to the legal advice or services of the local United States attorney to protect the rights and interests of the exchange. (See Ops. J. A. G., September 8, 1919.) See AR 210-75.

e. Liability to civil suit on contract.—* * * A post exchange is a voluntary unincorporated cooperative association of Army organizations, a kind of cooperative store in which all share in the benefits and all assume a position analogous to that of partners. Contracts to purchase goods entered into by the proper officers of a post exchange should be tested by the same rules of obligation which govern like agreements of individuals. In the event of

an inability on the part of a post exchange to pay its debts, the organizations which participate in the post exchange should themselves pay off all such obligations in proportion to their respective interest in the exchange. (Ops. J. A. G., June 4, 1918.) * * * The officers of a post at which a post exchange is located are not liable for its debts. (Ops. J. A. G., January 7, 1911.) * * * Where a post exchange officer was required over his protest to pay out of his private funds for certain supplies ordered, furnished, and used by the post exchange, * * * and the exchange was dissolved, * * * recommended that the post exchange officer be reimbursed * * * by the several organizations comprising the exchange at the time the indebtedness was incurred. *Ops. J. A. G., March 6, 1911; October 3, 1911.*

f. Reimbursement for loss while attempting to save property.—As property of the regimental or post exchange can not be treated as property belonging to the United States, an enlisted man whose property was destroyed while he was giving attention to saving property of the exchange is not entitled to reimbursement. *25 Comp. Dec. 960.*

g. Insurance.—Organizations which have erected recreation halls on Government land at their own expense under revocable licenses from the Secretary of War, by virtue of which they have the full right of use, occupancy, and enjoyment of such buildings until the licenses are terminated, and post exchanges which have erected buildings out of their own funds, have such an insurable interest in these buildings as will support a fire insurance policy. The consent of the United States to such insurance would add nothing to the validity of the policy, which is dependent on the facts as they exist. *Ops. J. A. G., February 16, 1924.*

SECTION X

COMPANY OR DETACHMENT

Paragraph
General 82

82. **General.**—*a.* The establishment of company or detachment exchanges is not authorized where a post exchange is established.

b. Company or detachment exchanges may be established when there is no post exchange and when in the opinion of the organization commander such exchange is desirable.

c. Company and detachment exchanges will conform as far as practicable to regulations prescribed for post exchange.

[A. G. 331.36 (5–1–29).]

BY ORDER OF THE SECRETARY OF WAR:

C. P. SUMMERALL,
General,
Chief of Staff.

OFFICIAL:
C. H. BRIDGES,
Major General,
The Adjutant General.

U. S. GOVERNMENT PRINTING OFFICE: 1929

[fol. 11a] EXHIBIT TO STIPULATION

Circular No. 57. (Cir. 57)

War Department,
Washington, October 31, 1929.

	Section
General prisoners—Changes in AR 600-375	I
Inspections of posts and camps—Changes in AR 20-10	II
Cash discounts—Changes in AR 35-6200	III
Service national standard authorized for brigades and higher units	IV
Changes in AR 210-65	V

I. General prisoners—Changes in AR 600-375.—Pending the publication of changes in AR 600-375 (Personnel—General Prisoners, General Provisions), May 19, 1923, the following changes in those regulations are published for the information and guidance of all concerned.

1. Paragraph 2a is changed to read:

2. Commanding Officer. a. General.—Full responsibility for the security, management and rehabilitation of prisoners is vested in the commanding officer, who may supplement the regulations contained herein as he may deem appropriate at the particular place of confinement, provided such supplementary instructions are formulated in accordance with these regulations, with well-established principles of security, discipline, cleanliness, efficiency, and humanity. He will assure himself by frequent inspections as to the proper enforcement of all prison regulations.

2. Paragraph 14h (as changed by paragraph 1, Section III, Circular No. 9, War Department, 1929) is rescinded and the following substituted therefor:

h. Restoration to Duty of General Prisoners.—The War Department desires to afford general prisoners serving sentences at posts the same opportunity for rehabilitation and restoration to duty as those serving sentences at a United States Disciplinary Barracks. Prison officers will, therefore, immediately after the arrival of a general prisoner and each six months thereafter, determine whether

he is suitable material for and desires restoration to duty. All general prisoners, except those convicted of felony, who are found upon examination to be mentally and physically qualified for military service, whose civil and military records warrant consideration for restoration to duty and who desire such restoration, will thereupon be designated as "probationers." In so far as local conditions permit, probationers will be given the military training referred to in paragraph 17b (1) and will be accorded the privileges authorized by paragraph 6g, AR 600-395 for probationers serving at disciplinary barracks.

A probationer may at any time after serving one-third of his sentence, and in sufficient time to permit action thereon prior to expiration of term of confinement, make written application for restoration. The application, accompanied by a statement of the probationer's civil and military record and of his physical condition will be forwarded through channels, with remarks and recommendation of the officers forwarding it, to the officer exercising general court-martial jurisdiction over the command or, where dishonorable discharge has been executed, to the Adjutant General. Recommendation as to assignment, should probationer be restored to duty, will also be made.

The provisions of this paragraph are not to be construed as impairing the right of the corps area commander or other competent authority to exercise, pursuant to A. W. 50 and 52, the power to remit or suspend the unexecuted part of a sentence and to restore the prisoner to duty at any time while the sentence is being served.

3. Paragraph 21d (1) is changed by changing (c) and adding (e) as follows:

(c) Folding arms.

(e) Requiring silence at meals, except while at attention or as a temporary disciplinary measure.

(A. G. 253 (10-7-29).)

II. Inspection of Posts and Camps—Changes in AR 20-10. —Pending the publication of changes in AR 20-10 (Inspector General's Department—Inspection of Posts and Camps), December 13, 1923, the following changes in those

[fol. 11b] regulations are published for the information and guidance of all concerned:

5. Subjects Embraced.

* * * * * * *

h. Care and treatment of general prisoners, methods pursued for their rehabilitation and the results thereof.
(A. G. 253 (10-7-29).)

III. Cash Discounts—Changes in AR 35-6200.—Pending the publication of changes in AR 35-6200 (Finance Department—Prompt Payment of Bills and Accounts), March 24, 1922, the following changes in those regulations are published for the information and guidance of all concerned:

2. Cash Discounts.—

* * * * * * *

d. (1) In general, the deduction of discounts under agreements by the Government to purchase supplies is authorized only when the vendor has made an express offer of such discounts, and a mere statement as to discounts, shown on the printed commercial bill of the vendor submitted for payment, is not generally to be regarded as such an express offer. See 23 Comp. Dec. 141; 2 Comp. Gen. 83; 5 id. 739.

(2) The decisions cited in (1) above pertain to formal contracts only. In cases of informal purchases, a statement as to cash discounts appearing on a dealer's invoice should be considered an offer of cash discount of which advantage should be taken, and any protest by a dealer against deduction of such a discount, on the ground that his bid or the procuring instrument was silent as to cash discount, or that the procuring instrument showed the price to be net, should be considered as a claim to be submitted to the General Accounting Office for direct settlement.
(A. G. 158 (10-15-29).)

IV. Service National Standard Authorized for Brigades and Higher Units.—Section IV, Circular No. 59, War Department, 1929, is amended by adding at the end thereof the following sentence:

Although not authorized for issue, silken national standards, silk individual flags, and silk distinguishing flags may

be purchased by headquarters of brigades and higher units for use on ceremonial occasions.

(A. G. 424.5 (10-18-29).)

V. Changes in AR 210-65.—Pending the publication of changes in AR 210-65 (Posts, Camps and Stations—Exchanges), June 29, 1929, the following changes in those regulations are published for the information and guidance of all concerned:

Paragraph 7½ added.

7½. Sales; to Whom Made.—Post or unit exchanges will sell to, or make purchases for the following named persons and organizations only. Purchases by individuals will be limited to those required for their own use or for the use of dependent members of their families.

a. Officers, warrant officers, and enlisted men of the Army, Navy, Marine Corps, and Coast Guard, on the active or retired list.

b. Commissioned officers of the United States Public Health Service.

c. Contract surgeons.

d. Army nurses.

e. Members of the Officers' Reserve Corps and the Enlisted Reserve Corps while on active duty.

f. Officers, warrant officers, and enlisted men of the National Guard and National Guard Reserve when in Federal service.

[fol. 11c] g. Dependent members of families of persons enumerated in a to f above, during the absence of such persons and upon written authority of the post, camp or station commander.

h. Hospital matrons.

i. Civilian employees authorized for service abroad, having a status recognized by the War Department as part of an expeditionary force.

j. Civilians employed with the Army and quartered at stations so located as to make the purchases from civilian

agencies impracticable, upon written authority of the post commander.

k. Honorably discharged officers, warrant officers, and enlisted men of the Army, Navy, Marine Corps, and Coast Guard in Army hospitals who are being cared for by and are receiving medical treatment from the United States Veterans' Bureau, upon presentation of a certificate from the regional officer or medical officer under whom they are undergoing medical treatment.

l. Officers, warrant officers, and enlisted men of the National Guard and National Guard Reserve——

(1) When in attendance at service schools or when attached to organizations of the Regular Army for routine practical instruction.

(2) When engaged in joint maneuvers with the Regular Army.

(3) When in camp at a station where exchanges are being operated.

m. Persons in actual attendance at Reserve Officers' Training Corps Camps and Citizens' Military Training Camps, at a station where exchanges are being operated.

n. Officers and crews of vessels of the Lighthouse Service and light keepers and depot keepers of the Lighthouse Service.

o. Units, and the components thereof, of——

(1) Army, Navy, Marine Corps, Coast Guard and United States Public Health Service.

(2) The Organized Reserves while on active duty.

(3) The National Guard and National Guard Reserve when in Federal Service or when engaged in joint maneuvers with the Regular Army or when in camp at a station where exchanges are being operated.

(4) Reserve Officers' Training Corps when in camps for such corps at stations where exchanges are being operated.

(5) Citizens' Military Training Camps when such camps are located at stations where post exchanges are being operated.

(A. G. 463.7 (8-15-29).)
By order of the Secretary of War.
C. B. Summerall, General, Chief of Staff.
Official.
C. H. Bridges, Major General, the Adjutant General.

[fol. 12] IN SUPERIOR COURT OF THE CITY AND COUNTY OF SAN FRANCISCO

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties entered into and signed a stipulation of facts, dated January 23, 1931, and filed it in open court July 16, 1931.

The cause came on regularly for trial July 16, 1931, before the court without a jury, U. S. Webb, Attorney General of the State of California, by H. H. Linney, appearing for the plaintiff, and Pillsbury, Madison & Sutro, by Vincent K. Butler, Jr., for the defendant. The cause having been submitted for decision, the court makes its findings of fact as follows:

Findings of Fact

I

All of the facts set forth in said stipulation of facts, filed herein July 16, 1931, are true.

Conclusions of Law

As conclusions of law from the foregoing facts, the court [fols. 13 & 13½] finds:

I

The plaintiff is entitled to take nothing by reason of its complaint.

II

The defendant is entitled to judgment against the plaintiff, together with its costs of suit.

Judgment is hereby ordered to be entered accordingly. Dated July 13th, 1932.

C. J. Goodell, Judge of the Superior Court.

[fols. 14 & 14½] IN SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO, DEPT. No. 16

No. 214,441

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

STANDARD OIL COMPANY OF CALIFORNIA, a Corporation, Defendant

JUDGMENT

The above entitled cause came on regularly for trial on the 16th day of July, 1931, upon an agreed statement of facts, before the court sitting without a jury, U. S. Webb, Attorney General of the State of California, by H. H. Linney, appearing for plaintiff, and Pillsbury, Madison & Sutro, by Vincent K. Butler, Jr., for defendant. The cause was submitted for decision, and the court having heretofore made and caused to be filed herein its written findings of fact and conclusions of law, and being fully advised:

It is ordered, adjudged and decreed that the plaintiff take nothing by reason of its complaint, and that the defendant have judgment against the plaintiff, together with the defendant's costs and disbursements incurred in said action in the sum of $2.50.

Dated July 13th, 1932.

C. J. Goodell, Judge of the Superior Court.

[fol. 15] IN SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO, DEPT. No. 16

No. 214,441

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

STANDARD OIL COMPANY OF CALIFORNIA, a Corporation, Defendant

OPINION

The question presented for decision is whether gasoline sold by the defendant to the Post Exchange at the Presidio

of San Francisco is taxable by the State under its Gasoline Tax Act. The sales were made by delivery in barrels and tank trucks within the boundaries of the Military Reservation. The stipulation shows that 420 gallons were sold which, at the 3 cent tax, comes to only $12.60. Despite the trifling amount involved the case has received thorough and careful attention at the hands of counsel and has been ably and exhaustively briefed for it is a novel question in this State.

The payment of the tax is resisted upon three grounds, the first being that sales in the Presidio are not within the State, the second that deliveries from San Francisco to the Presidio constitute commerce within the exclusive jurisdiction of the United States, and the third that the sales were made to a department of the Federal Government.

It is evident from the face of the Gas Tax Act that the reason for its enactment and the policy underlying it was to compel the motorists using the highways of this State to pay for the construction and maintenance of the roads [fol. 16] over which they drive. The provisions of Section 13 show this plainly. Moreover, it is common knowledge and the Supreme Court recognizes this when they say that "The clear intent of the law was to levy an excise or occupation tax upon distributors of motor vehicle fuel, giving such distributors, however, ample opportunity to fully indemnify themselves by adding the amount of the tax to the selling price of the fuel and thus in effect collect the tax from the consumer" (People v. Ventura Refining Co., 204 Cal. 286, at 294). And, as to this indirect effect of the tax upon the consumer-motorist see Old Homestead Bakery, Inc. v. Marsh, 75 Cal. App. 247, at 255-256. This is conceded by the State.

The Act (Sec. 1, c) defines the distributor to be one who sells motor vehicle fuel in this state, being careful to include those who import and then sell it here, as well as those who find it in California and sell it here.

Section 3 of the Act provides that "Every distributor shall * * * pay a license tax to the state * * * for each gallon of motor vehicle fuel refined, manufactured, produced or compounded by such distributor in this state and sold and delivered by him *in this state*, or imported by such distributor into and distributed or sold by him *in this state* otherwise than in the original package."

We have seen that the policy underlying the legislation and the end it was invented to serve, was to make the ultimate consumer, the motorist, pay indirectly for the roads over which he travels and that in practice it works out this way. We have seen also that the statutory machinery designed as a means to accomplish this end, that is, to get the money into the hands of the State and thence into the road funds of the State and of the several counties, is a levy upon the distributor of 3 cents for each gallon of gas sold in California. In this discussion the indirect end sought [fol. 17] should not be confused with the direct means employed for its accomplishment. It is, after all, the means, i. e. the legal machinery of the thing, with which we are concerned.

Respecting the first point, then—the claim of the State that sales to the Post Exchange are sales in the State and the claim of the defendant that they are not, the position of the Attorney-General, as to the type of tax, is stated as follows: "The tax is not a sales tax, but a tax imposed upon the refiner and distributor of motor vehicle fuel, measured by the amount of such fuel distributed." To this is added: "As is well known, the tax is in effect passed on to the ultimate consumer and constitutes payment for the use of the highways of the State which are built and maintained by the State." The first statement has to do with the method by which the tax is levied, the second with its consequences. In the Act there is no legal connection or relation between the one and the other. The fact that the tax falls ultimately on the motorist by being added to the price is something with which the Act is not concerned so far as appears from its language. It simply works out that way in practice as everybody knows and as the Courts sensibly have recognized (See Ventura and Old Homestead cases, supra). However, in testing the legal question of taxability should we bring the indirect and ultimate consequences of the legislation in to the discussion?

The tax, it is agreed on all sides, is measured by the amount of gasoline distributed. The taxpayer has a right to insist that the yard-stick be not extended or prolonged beyond its statutory length, which is fuel "sold and delivered by him in the State".

The agreed facts settle the inquiry as to sale and de-
[fol. 18] livery, for they show that the sales were not consummated until delivery was effected by the transfer of the fue from the barrels and tank trucks into the containers at the Post Exchange, within the boundaries of the Presidio.

Broadly and geographically speaking, the Presidio is of course in California. But, whether it is in this State in a legal and jurisdictional sense, namely within the taxing jurisdiction of the State, is the precise question.

In the able and carefully prepared memorandum written by Colonel Graham of the Judge Advocate General's Department to the Secretary of War, dated May 3, 1930, a copy of which is part of the brief of amici curiæ, there is set forth the history of the Presidio of San Francisco substantially as it is found in the case of United States vs. Watkins, 22 Fed. 2nd 437, cited by defendant. This shows that by the Act of March 2, 1897 (Stats. 1897, p. 61) there was a cession by the State to the Federal Government of whatever jurisdiction then remained in the State. The only reservation was the usual one of the right to serve and execute civil and criminal process. The wording of the reservation respecting criminal process limiting it to that only "against any person or persons charged with crimes committed *without* said lands", indicates rather clearly an intent to surrender jurisdiction to try and to punish crimes committed within the lands ceded. An offense, then, committed in the Presidio would not be in the State and hence not cognizable by our Courts (See People v. Mouse, 203 Cal. 782). This seems to me to be a pretty good test. If exclusive jurisdiction has been transferred, how can it be said that goods delivered in the Presidio are still in the State for the purpose of measuring a tax when a theft of the same goods in the Presidio would not be "in the State" [fol. 19] for the purpose of trial and punishment.

The defendant argues that "the Presidio is as much without the State of California as any other State or foreign territory". The Government put it this way: "Federal Reservations are *islands* within the territorial jurisdiction of the States" and "The Presidio is outside the State as truly as Nevada." The "island" idea is elaborated upon in Concessions Co. v. Morris, 109 Wash. 46, 186 Pac. 655, with respect to Camp Lewis (carved out of the

State of Washington) as follows: "thereby there has been created an independent sovereignty the territory of which is surrounded by the state of Washington, but over which the state of Washington has no jurisdiction. A territory has been created which resembles that of the District of Columbia * * *". The Washington Court held that under the law of that State "only personal property in the State of Washington can be listed for taxation".

The Supreme Court of the State of Washington in the Concessions Co. case seems to have based its decision upon several grounds. The first was the constitutional ground (Art. I, Sec. 8, Cl. 17); the second, a provision exempting from taxation, found in the Washington laws of 1915, page 358; the third, the law of 1917, page 2, giving legislative consent to the donation of the land from Pierce County; the fourth, and last, a provision of Sec. 9101 of Remington & Ballinger's Codes providing that only property in the State could be listed for taxation. It would seem that only one of these grounds was necessary for the decision, and that one, the constitutional ground first mentioned. (See Surplus Trading Co. vs. Cook, 281 U. S. 647.)

The Camp Lewis Case it is true, has to do only with the taxation of personal property (movables) located within the [fol. 20] Military Reservation, which is not the question in this case, but parenthetically it might be remarked that if the State may not constitutionally tax movables found upon a Military Reservation ceded to the Federal Government, there would seem to be no valid reason why it could use personal property sold and delivered within a Military Reservation so ceded as a measure for a tax such as the one involved in this case, levied against a distributor within the State. This is only noted incidentally and in passing, and is not necessary to the discussion. Aside from that there is the purely territorial question, and in this connection the Camp Lewis Case holds in substance that a Military Reservation so ceded is no longer State territory, but becomes Federal territory. Either way the question is approached, either from the jurisdictional or territorial standpoint, it would seem that the Camp Lewis Case is authority on the subject. But, there is still higher authority.

The Surplus Trading Company case, although it does not mention the Camp Lewis case, holds substantially the

same as the Washington Supreme Court held in that case. It is interesting to note that in the opinion (at page 652 of 281 U. S.) in discussing the provision of the Federal Constitution with respect to the exercise of exclusive legislation in all cases whatsoever "over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings, says that 'Exclusive legislation' is consistent only with exclusive jurisdiction. It can have no other meaning as to the seat of government, and what it means as to that it also means as to forts, magazines, arsenals, dock-yards, etc. That no [fol. 21] divided jurisdiction respecting the seat of government is intended is not only shown by the terms employed, but is a matter of public history. Why as to forts, magazines, arsenals, dock-yards etc., is the power given made to depend on purchase with the consent of the Legislature of the State if the jurisdiction of the United States is not to be exclusive and that of the State excluded? The question is not an open one. It long has been settled that where lands for such a purpose are purchased by the United States with the consent of the State Legislature the jurisdiction theretofore residing in the State passes, in virtue of the constitutional provision, to the United States, thereby making the jurisdiction of the latter the sole jurisdiction." (See also U. S. v. Unzeuta, 281 U. S. 138.)

The force of the Camp Lewis case is attacked by the Attorney-General on the claimed ground that it is against the weight of authority, both Federal and State, as is pointed out in the Haynie case, 297 S. W. 822. The Attorney-General, however, frankly adds that the Haynie case was itself reversed in the Surplus Trading Co. case already discussed. The holding of the Haynie case is concisely stated at 281 U. S. 650 as follows:

"The Supreme Court of the State, although recognizing that the status of Camp Pike was as just stated and that the property on which the tax was laid was in much the greater part located therein, rejected the contention that the tax laws of the State could not be applied to property so located consistently with the constitutional provision cited."

The taxing by the State of movables within a Military Reservation was the question involved in both the Camp Lewis and the Camp Pike cases. In the former the Washington Supreme Court held that the Federal constitutional provision had to be obeyed. The Arkansas Supreme Court [fol. 22] did not consider it to be within this provision and was reversed. Any criticism, therefore, found in the Haynie case, the fate of which was reversal, seems to fall of its own weight.

It is pointed out also that the Camp Lewis case is disapproved in Grayburg Oil Co. vs. State, 286 S. W., 489. In that case it is said, in discussing the Camp Lewis case, that whatever is said therein with respect to ceded territory ceasing to be a part of the State and becoming territory of the United States was not essential to the decision. But, as in the Arkansas case, whatever criticism might be found in the Grayburg decision is, to a large extent, if not entirely, nullified by the fate that it, too, met at the hands of the Supreme Court, where it was reversed (278 U. S., 582).

I am satisfied that after exclusive jurisdiction is ceded a Military Reservation remains within the State from which it was carved only in a broad, general and geographical sense; that it becomes United States territory and that in no legal sense does it remain within the State; that it certainly is not within the State's taxing jurisdiction any more than it is within the State's criminal jurisdiction.

Adverting to the the argument based upon the recognized purpose of the Gas Tax Act, namely, to collect by taxation money for highway construction and maintenance from those who drive on the highways: it is argued that if these Post Exchange sales were not held taxable the very purpose of the law would be defeated; that those entitled to buy gas at a Post Exchange at a three cent preferential price could use our highways without helping to pay for them; and it is argued that motorists residing in the Presidio drive over the highways of California far more than they drive over the roads within the Reservation. Con- [fol. 23] ceding this to be true, the solution of the problem is not aided. That problem, as has been pointed out already, is simply as to the meaning of that part of the Statute which prescribes the machinery for the collection of the tax upon which the State has to rely, and within the

provisions of which the State must bring itself in order legally to compel payment by the taxpayer.

The Attorney-General argues that if these Post Exchange sales are not held taxable the class of persons buying gasoline from the Exchanges, little by little, will be enlarged and the revenues of the State from this source will be correspondingly reduced, to the detriment of the highways, "An inch" it is said "once conceded, will, in time, be stretched to a foot, and so on". This argument for the exertion of the taxing power so as to increase and safeguard the State's revenues may be opposed, I am tempted to say parenthetically, by an argument equally cogent on the other side, phrased in Marshall's classic words "That the power to tax involves the power to destroy". But, after all, the record in this case shows that the number of persons entitled to buy from a Post Exchange is comparatively limited and restricted and the Army authorities cannot for a moment be presumed to sanction any improper or unwarranted enlargement of this class. If this ever gets to be a serious abuse its cure lies with the Legislature and not with the Courts.

No system of taxation can be perfect. There must be inevitably, in the nature of things, hardships under every scheme of taxation, falling sometimes upon the taxpayer and sometimes upon the taxing power. No net for the [fol. 24] gathering of taxes can be made with a mesh so fine as to be absolutely impervious. Indeed, there readily comes to mind a case (of which there must be many throughout the State) where there are similar escapes. For instance, at Calexico gasoline delivered by the Standard Oil Company from a station on the California side of the border to a merchant on the Mexicali side is certainly a sale out of the State and not taxable, and yet the Mexicali merchant may fill his automobile with this gasoline and use it to drive as far over our Southern California highways as it will take him. This is precisely what happens in the Presidio, and it will not be seriously contended that a tank truck of gasoline delivered in Mexico would be a sale in this State.

The case of U. S. v. Gordy decided in the District Court of Maryland by Judge Coleman seems to involve substantially the same question as the one with which we are dealing. It is an added authority to those already cited, and

I would have been perhaps justified in simply ruling in this matter on the authority of that case. The importance of the case at bar, however, and the thorough way in which it has been briefed and presented by the Attorney-General, by counsel for the defendant, and by the amici curiæ on behalf of the Government, seemed to call for rather a fuller discussion, so that all concerned might know the reasons for the ruling.

The point just discussed is not nearly so interesting as the other two points, and because of the way in which they have been presented one is tempted to delve into the many cases cited under those heads, but time does not permit and nothing would be gained by it.

May I add again a word of keen appreciation of the way [fol. 25] in which the case has been presented. The briefs filed by all the counsel in the case have been able, thorough and exhaustive and by their full quotations they have greatly lightened the burden of research that otherwise would have been upon me.

As is already apparent, I am satisfied that the judgment should be for the defendant.

C. J. Goodell, Judge.

[fol. 26] IN SUPREME COURT OF CALIFORNIA

Bank

San Francisco No. 14739

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, Appellant,

vs.

STANDARD OIL COMPANY OF CALIFORNIA (a Corp.), Defendant, Respondent

On Appeal from the Superior Court in and for the City and County of San Francisco

JUDGMENT—May 1, 1933

The above entitled cause having been heretofore fully argued, and submitted and taken under advisement, and all and singular the law and premises having been fully considered,

It is ordered, adjudged, and decreed by the Court that the Judgment of the Superior Court in and for the City and County of San Francisco in the above entitled cause, be and the same is hereby reversed with directions to the court below to enter judgment for plaintiff as prayed. Appellant to recover costs on appeal.

Clerk's certificate to foregoing paper omitted in printing.

[fol. 27] [File endorsement omitted]

IN SUPREME COURT OF CALIFORNIA

In Bank

S. F. No. 14739

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Appellant,

vs.

STANDARD OIL COMPANY OF CALIFORNIA, a Corporation, Defendant and Respondent

OPINION—Filed May 1, 1933

By the COURT:

This action is by the People of the State of California to recover from defendant a balance due for excise taxes imposed by the Act of 1923 (Stats. 1923, p. 571, chap. 267), as amended by the Statutes of 1927, pp. 1309 (Chap. 716) and 1565 (Chap. 795), based upon sales of gasoline to and deliveries at the Army Post Exchange located on the Presidio Military Reservation at San Francisco. The defendant had judgment in the court below and plaintiff prosecutes this appeal.

The case arises upon an agreed statement of facts, which show that beginning about July 1, 1929 and ending September 30th of the same year, defendant sold and delivered to said post exchange a certain quantity of motor vehicle fuel; that such gasoline was carried by defendant in barrels and tank trucks to the exchange and there delivered, defendant bearing the expense of and assuming the risk in such transportation; that the Presidio was established

as a military post under Spanish dominion in 1776; was continued as such by the Republic of Mexico and was ceded to the United States in 1848 by the Treaty of Guadalupe Hidalgo; that in 1850, by executive order, it was reserved for public purposes; that said order was modified in 1851, [fol. 28] from which year it has been continuously occupied by the United States as a military reservation; that, moreover on March 2, 1897, the Legislature of California ceded to the United States Government sole legislative jurisdiction over said reservation; that the Presidio Post Exchange at all times herein was an organization doing business under Army Regulation No. 210-65, dated June 29, 1929, as modified by Circular 57 of the War Department, dated October 31, 1929; that defendant duly reported said sales to the State Board of Equalization, as required, but declined to pay the tax due thereon, claiming that a sale to the post exchange was not to be considered in computing said tax.

The pertinent provisions of the said Act are: Section 1c (Stats. 1923, p. 572), which, so far as here material, defines a distributor to be one who refines, manufactures, produces or compounds motor vehicle fuel in this state and sells the same in this state (also covers other classes not here involved). Section 3 (Stats. 1923, p. 572) provides: "Every distributor shall * * * pay a license tax to the state * * * for each gallon of motor vehicle fuel refined, manufactured, produced or compounded by such distributor *in this state* and sold and delivered by him *in this state*, or imported by such distributor into and distributed or sold by him in this state otherwise than in the original package * * *." Section 10, as amended in 1927, (Stats. 1927, p. 1309) provides for certain exemptions as follows: "The provisions of this act requiring the payment of license fees shall not be held or construed to apply to motor vehicle fuel imported into this state in interstate or foreign commerce and intended to be sold in the original and unbroken tank cars or other original receptacles, containers or packages and so sold while the same are in interstate or foreign commerce nor to any motor vehicle fuel exported or sold for exportation and exported for use outside this state, nor to any motor vehicle fuel *sold to the government*

of the United States or any department thereof for official use of said government but every distributor shall be re- [fol. 29] quired to report such exports and sales to the state board of equalization in such detail as that board may require."

We thus have presented the question whether sales and deliveries of gasoline at a military reservation under the sole jurisdiction of the United States, made to the Army Post Exchange therein, are to be excluded in fixing the license fees to be paid by the distributor under said act of the legislature. Or, in other words, is the post exchange at the presidio military reservation in San Francisco, entitled to purchase gasoline in this state at a price less than that paid by other persons admittedly coming under the act?

It is at once conceded, as already implied, that the military reservation in question is territory over which the United States exercises sole legislative authority. U. S. v. Watkins, 22 Fed. (2) 437; Peo. v. Mouse, 203 Cal. 782. It is contended that by reason of this concession, a sale consummated on it is a sale outside the state, as tho consummated in Nevada or Oregon. It is our conclusion that the manifest intention of the act was to include all sales completed within the geographical confines of the state and for this purpose said military reservation was to be included like all other territory. The holding to the contrary in U. S. v. Cordy, 58 Fed. (2) 1013, is based upon the peculiar provisions of the act there involved under which it was held by the district court that the language of the act itself excluded sales made upon military reservations. This holding does not aid in the solution of the problem before us.

It is next urged that a sale to the Army Post Exchange is a sale to a department of the government of the United States for official use of said Government. Manifestly these sales are neither to a "department" of the Government nor for official use. The gasoline was sold to the exchange for resale to certain classes of persons for their [fol. 30] private consumption. We have no hesitation in concluding that the legislative intent was to include the sales in question in computing the tax. But these observations do not determine the cause.

We are pointed to the decision of the Supreme Court of the United States in the case of Panhandle Oil Co. v. Mis-

sissippi, 277 U. S. 218, where the court used language showing that an important question is here involved. There, as here, the State of Mississippi imposed an excise tax upon distributors of gasoline measured by sales within that state. The state sued the oil company to recover balances represented by sales to the United States for use of its Coast Guard service operating in the Gulf of Mexico and for its Veterans Hospital at Gulfport. The sales were made directly to the Government and the court held that said statute was inoperative as to them, using language in part as follows: "The States may not burden or interfere with the exertion of national power or make it a source of revenue or take the funds raised or tax the means used for the performance of federal functions. * * * The amount of money claimed by the State rises and falls precisely as does the quantity of gasoline so secured by the government. It depends immediately upon the number of gallons. The necessary operation of these enactments when so construed is directly to retard, impede and burden the exertion by the United States of its constitutional powers to operate the fleet and hospital. * * *" This was a five-four decision of the court; Justices Holmes, Brandeis, McReynolds and Stone dissented, Justice Holmes and McReynolds writing opinions.

But it seems to us that a well founded distinction may be found between the sales there involved and sales to an army post exchange. The commanding officer of an army [fol. 31] post is not required to organize the post exchange unless there is need for it unless the units present desire to participate therein or unless the personnel is sufficient to profitably maintain and support such an institution. In other words, a post exchange is at most but a government agency, designed to operate for the welfare of the troops such activities as a general store, meet or vegetable market or gasoline station, or a restaurant, gymnasium, recreation room, library or theater. Thus it is not properly described by the word "department" of the government in its activities. It is largely a cooperative institution, intended to supply the needs and promote the moral and civic betterment of the troops at the post.

It is supervised by an exchange council, composed of the commanding officers of the respective units represented in the organization. The funds of the exchange are not public

moneys within the meaning of the Revised Statutes (Rev. Stats. Sec. 5488, 90, 92). The exchange is not instituted by the aid of funds from the United States nor are its avails paid into the treasury. It is a voluntary, unincorporated, cooperative association in which all units share the benefits and all assume a position *analagous* to that of partners. In the event of the inability of the post exchange to pay its debts, the organizations which participate in it are supposed themselves to pay off all such obligations in proportion to their respective interests in the exchange. Neither the Government nor the officers of the post wherein the exchange is located are liable for its debts. The property of the post exchange is not to be treated as property belonging to the United States. The exchange itself is liable for certain Federal taxes, such as the stamp tax imposed by the Internal Revenue Act, the freight tax imposed by the War Revenue Act of 1917, a floor tax on tobacco under the [fol. 32] Revenue Act of 1919, sec. 702; sales of ice cream and soft drinks by a post exchange are subject to tax under the same act. From these and other observations that might be made, touching the nature of the organization of an army post exchange, we are of the opinion that it is an organization largely engaged in business of a private nature and that sales to it should not be beyond the reach of the taxing power of the state wherein it is located and that it is not one of those agencies thru which the Federal government exercises its constitutional or sovereign power.

The case of Thirty-first Infantry Post Exchange v. Posadas, 54 Philippine Reports 866, 876, throws some light on the question before us. There the Post Exchange drew into question the validity of a tax levied by the Government of the Philippine Islands on sales by local merchants to the exchange. The court sustained the tax and distinguished the Panhandle Oil case, supra, and, among other distinguishing features, it pointed out the following: "There the right of the United State to make purchases was derived from the United States Constitution; here the right of the Army Post Exchange to make purchases is derived from Army regulations and Army practice. There the sale was made to instrumentalities authorized by the constitution, which consumed the merchandise; here the sales were made to Army Post Exchanges not so constitutionally authorized, which merely acted as interme-

diaries. There it must be taken for granted that the Coast Guard Fleet and the Veterans' Hospital were constructed and operated by Government funds; here, except that buildings are provided by the United States Government for the Army Post Exchange, the latter are not so constructed and operated."

Again in Keane v. United States, 272 Fed. 577, it was [fol. 33] held that a conspiracy to defraud the United States was not made out by charging a conspiracy to defraud an army post exchange. We quote the syllabus: "A military post exchange, which is a voluntary association of companies, detachments, or other army units at military posts, permitted, but not required, by a special regulation of the War Department for the purpose of conducting for the benefit of the members of such units what is in effect a co-operative store and place of entertainment, with their own funds, and for whose contracts and obligations the United States is not responsible, and in whose funds it has no interest, tho its business is conducted by an officer detailed for the purpose, held not a 'department of the government', and proof of a conspiracy to defraud a post exchange held not to sustain an indictment, under Criminal Code, sec. 37, for conspiracy to defraud the United States."

Such cases as Surplus Trading Co. v. Cook, 281 U. S. 647 and Concessions Co. v. Morris (Wash.), 186 Pac. 655 and others of that class, which relate to taxation of personal property having its situs upon a military reservation in the exclusive jurisdiction of the United States are not in point and throw little if any light upon the question here involved.

Lastly, it is contended that the deliveries from San Francisco to the Presidio reservation constitute interstate commerce within the exclusive jurisdiction of the United States and that the State of California may not impede it by this form of taxation. The transactions in question were purely intrastate. There is no force in the contention that a sale and transportation from a point in California without the [fol. 34] reservation to the exchange on the reservation is interstate commerce. We are pointed to no Federal authority to this effect and, in reason, none should exist holding that a military reservation under the exclusive legislative authority of the United States is to be considered

in the same status as the District of Columbia or Alaska, or other territory having an autonomous existence. Under the plain holding in the case of Eastern Air Transport, Inc. v. South Carolina Tax Commission, 285 U. S. 147, interstate commerce would not be involved even if the sales were made of gasoline to be used thereafter by persons engaged exclusively in interstate transportation of goods.

The judgment is reversed with directions to the court below to enter judgment for plaintiff as prayed.

[fol. 35] [File endorsement omitted]

[fol. 36] IN SUPREME COURT OF CALIFORNIA

[Title omitted]

RESPONDENT'S PETITION FOR A REHEARING—Filed May 22, 1933

To the Honorable William H. Waste, Chief Justice, and to the Associate Justices of the Supreme Court of the State of California:

I

The important issue in this case is not whether soldiers at the Presidio should pay three cents a gallon more for their gasoline or whether the California legislature intended them to do so. The question of national consequence is whether the State of California, after giving exclusive jurisdiction over certain territory to the United States for [fol. 37] federal military purposes, has the power thereafter to invade that territory and impose a tax without the sovereign's consent.

This paramount issue has been passed without a word by this court, despite the fact that the opinion recognizes the exclusive character of federal jurisdiction over the Presidio and the further fact that this court, in line with rulings of the United States Supreme Court, has heretofore insisted that lands ceded to the government for military purposes are subject to federal authority alone.

In support of its first contention that sales of gasoline made in the Presidio are not subject to the state gasoline

tax, respondent argued two propositions: first, as matter of construction, the legislature did not intend to include Presidio sales because of the uniform language of the act which confines its application to sales "within this state"; and second, as matter of jurisdiction, even though the legislature had intended to reach the Presidio sales, it was wholly without power to do so.

The opinion asserts in three places that the United States Government has exclusive jurisdiction:

"On March 2, 1897, the Legislature of California ceded to the United States Government *sole legislative jurisdiction* over said reservation. * * *

[fol. 38] "We thus have presented the question whether sales and deliveries of gasoline at a military reservation under the *sole jurisdiction* of the United States * * * are to be excluded in fixing the license fees to be paid by the distributor. * * *

"It is at once conceded, as already implied, that the military reservation in question is territory over which the United States exercises *sole legislative authority.*"

Despite this recognition of exclusive federal jurisdiction, the court dismisses respondent's contention in a single sentence:

"It is our conclusion that the manifest intention of the act was to include all sales completed within the geographical confines of the state, and for this purpose said military reservation was to be included like all other territory."

The court thus confines itself to only one of the questions presented, "the intention of the act." As to the second and graver proposition, on which the opinion is silent, it appears obvious that since the court finds sole jurisdiction and power to be in the United States, there can be no state jurisdiction or power to support the local legislative intent even if it were present. Yet the decision which has been reached necessarily implies that the state had such power. The conclusion of the court, therefore, cannot be reconciled with the statements of law in its opinion on the jurisdictional question.

[fol. 39] Nor can it be reconciled with the court's ruling in People v. Mouse, 203 Cal. 782, 786 (opinion by Preston, J.):

"* * * exclusive jurisdiction has been ceded to the United States over all grounds being used for military purposes. If then the institution in question, or the grounds in connection therewith, * * * is being used for military purposes within the meaning of said act of the state of California, jurisdiction of the United States is exclusive."

If the Mouse case is law, the logic of its application to this case is inescapable. It is clear, as the trial court said, that

"an offense * * * committed in the Presidio would not be in the *State* and hence not cognizable by our courts (see People v. Mouse, 203 Cal. 782). This seems to me to be a pretty good test. If exclusive jurisdiction has been transferred, how can it be said that goods delivered in the Presidio are still in the State for the purpose of measuring a tax when a theft of the same goods in the Presidio would not be 'in the State' for the purpose of trial and punishment?"

Unless the patent inconsistency between the decision in the Mouse case and the decision in this case is removed, a state of uncertainty will be created by the conflict.

II

The opinion raises grave doubt on another score. Respondent cited decisions of the United States Supreme [fol. 40] Court and of state jurisdictions, holding that states are without power to tax tangible personal property on military reservations under the exclusive jurisdiction of the federal government. These authorities are summarily dismissed by this court as not in point. It is earnestly emphasized that they are directly in point as holding that the power to tax can be exercised only when the subject sought to be taxed is within the taxing jurisdiction.

If the state is unable to tax tangibles at the Presidio because outside of its jurisdiction, how can it levy an excise or license or privilege tax upon a transaction which this court itself describes as having taken place entirely within the Presidio and outside of state jurisdiction?

The United States Supreme Court early established in a leading case (State Tax on Foreign-Held Bonds, 82 U. S. 300, 319) that subjects of taxation, whatever their character,

must be within the jurisdiction of the taxing state, and that this rule applies to all subjects of taxation alike, whether they be persons, property or business. The court said:

"The power of taxation, however vast in its character and searching in its extent, is necessarily limited to subjects within the jurisdiction of the State. These subjects are persons, property, and *business*. Whatever form taxation may assume, whether as duties, imposts, *excises*, or *licenses*, it must relate to one of these subjects."

[fol. 41] Whether the California gasoline tax be described as a sales tax or business tax or distributor's tax, the sale was made, the business done and the distribution accomplished entirely within the Presidio, and the state has no power to impose a license or excise tax there. Furthermore, this court has held in People v. Ventura Refining Company (204 Cal. 286), opinion by Preston, J., that the tax in effect is collected from the consumer—in this case a resident of the Presidio.

If the court's decision were to stand, it would be consistent for the assessor in San Francisco to seek to include on his rolls the tangible personalty of the officers and enlisted men at the Presidio, and indeed the real property within the reservation.

III

One further point may be noted. The United States District Court in Maryland, in United States v. Cordy, 58 F. (2d) 1013, recently ruled that, because the United States Military Reservation in Fort Meade, Maryland, like the Presidio, is exclusively federal territory, gasoline sales made there are not subject to the Maryland gasoline tax act. This court states that the federal ruling in Maryland

"is based upon the peculiar provisions of the act there in-
[fol. 42] volved, under which it was held by the District Court that the language of the act itself excluded sales made upon military reservations. This holding does not aid in the solution of the problem before us."

The "peculiar provisions" of the Maryland act are almost identical with the provisions of the California act.

Maryland imposes the tax upon the dealer in motor vehicle fuel and defines him to be "any person * * * who imports * * * gasoline * * * for use, distribution or sale and delivery in, and after the same reaches, *the State* of Maryland." The same definition is made applicable to any person producing, refining, manufacturing or compounding motor vehicle fuel *in the state* for use, distribution or sale and delivery *therein*.

The California act requires the payment of the tax "for each gallon of motor vehicle fuel refined, manufactured, produced or compounded by such distributor *in this state* and sold and delivered by him *in this state* or imported * * * and distributed or sold * * * in *this state*."

It, therefore, cannot in justice be said that there is any language in the Maryland act differing from ours which places military reservations in a class apart or excludes sales made there. On the contrary, the provisions of the two statutes are substantially the same. If this court elects [fol. 43] to disagree with the court's reading of the plain meaning of words in the Maryland case, it cannot base its decision upon any difference in the terms of the two statutes.

IV

For the purposes of this petition, we have omitted reference to the contentions that deliveries to the Presidio are commerce within the exclusive jurisdiction of the United States, and that Post Exchanges are exempt from tax as federal instrumentalities. The first point is a corollary of the one stated in this petition; the second will be reserved for reargument if an opportunity is afforded.

Respondent respectfully petitions that this case be reheard and that this court's decision be reconsidered.

Dated San Francisco, May 19, 1933.

Pillsbury, Madison & Sutro, Felix T. Smith, V. K. Butler, Jr., Attorneys for Respondent and Petitioner.

[fol. 44] IN SUPREME COURT OF CALIFORNIA

In Bank

[Title omitted]

ORDER DENYING PETITION FOR REHEARING. Filed May 29, 1933

By the Court:

The petition for a rehearing herein is denied.
Mr. Justice Thompson voted for a rehearing.
Dated May 29, 1933.

Seawell, Acting Chief Justice.

[File endorsement omitted.]

[fol. 45] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL, ASSIGNMENT OF ERRORS, AND PRAYER FOR REVERSAL. Filed July 20, 1933

Petition for Appeal

Considering itself aggrieved by the final decision of the Supreme Court of the State of California in the above entitled cause, the defendant therein, Standard Oil Company of California, hereby prays that an appeal be allowed to the Supreme Court of the United States, herein, and for an order fixing the amount of the bond thereon.

Assignment of Errors

And the said defendant, Standard Oil Company of California, assigns the following errors in the record and proceedings in the said case:

I. The Supreme Court of the State of California erred in upholding the validity of the California Motor Vehicle Fuel Tax Act, (Cal. Stats. 1923, p. 571, chap. 267, as amended by the Statutes of 1927, pp. 1308, 1565) when applied to sales of gasoline made within the territorial limits [fol. 46] of the United States military reservation at the Presidio, San Francisco, California, to the Presidio Post Exchange.

2. The Supreme Court of the State of California erred in holding that the State of California, having given to the United States exclusive jurisdiction over certain territory known as the Presidio, for the establishment of a federal military reservation, has the power thereafter to invade that territory by the imposition of a tax upon sales therein, without the sovereign's consent.

3. The Supreme Court of the State of California erred in holding that sales and deliveries of gasoline from San Francisco to the Presidio Post Exchange are subject to excise taxes imposed by the California Motor Vehicle Fuel Tax Act (Cal. Stats. 1923, p. 574, chap. 267, as amended by the Statutes of 1927, pp. 1308, 1565).

4. The Supreme Court of the State of California erred in holding that deliveries of gasoline from San Francisco to the Presidio Post Exchange do not constitute commerce within the exclusive jurisdiction of the United States upon which the State of California may not levy a tax or impose a burden.

5. The Supreme Court of the State of California erred in holding that a sale of gasoline to the Presidio Post Exchange is not a sale to a department of the Government of the United States for the official use of the Government.

6. The Supreme Court of the State of California erred in reversing the judgment of the Superior Court of the State of California, with directions to that court to enter judgment for the plaintiff as prayed.

Prayer for Reversal.

For which errors the defendant, Standard Oil Company of California, prays that the said judgment of the Supreme Court of the State of California, dated May 1, 1933, in the above entitled cause, be reversed, and that the judgment of the Superior Court of the State of California in the [fol. 47] above entitled cause, in favor of the said defendant, be affirmed, and that the defendant be awarded its costs.

Dated July 14, 1933.

Felix T. Smith, V. K. Butler, Jr., Attorneys for Appellant.

[fol. 47½] [File endorsement omitted.]

[fol. 48] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—Filed July 20, 1933

The appellant in the above entitled suit, having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above entitled suit by the Supreme Court of the State of California on the 1st day of May, 1933, and from each and every part thereof, and having presented and filed its petition for appeal, assignment of errors, and prayer for reversal, pursuant to the statutes and rules of the Supreme Court of the United States in such case made and provided;

It is now here ordered that an appeal be, and the same is hereby, allowed to the Supreme Court of the United States from the Supreme Court of the State of California in the above entitled cause, as provided by law, and it is further ordered that the clerk of the Supreme Court of the State of California shall prepare and certify a transcript of the record, proceedings and judgment in this cause and [fol. 49] transmit the same to the Supreme Court of the United States, so that he shall have the same in said court within sixty (60) days of this date.

And it is further ordered that security for costs on appeal be fixed in the sum of $500.

Dated July 20, 1933.

William H. Waste, Chief Justice of the Supreme Court of the State of California.

[fol. 49½] [File endorsement omitted.]

[fols. 50-51½] Bond on appeal for $500.00, approved and filed July 20, 1933, omitted in printing.

[fols. 52-54b] Citation, in usual form, showing service on U. S. Webb, filed July 20, 1933, omitted in printing.

[fol. 55] SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION AS TO CONTENTS OF TRANSCRIPT OF RECORD
Filed July 26, 1933

It is hereby stipulated that the transcript of record to be filed in the Supreme Court of the United States, pursuant to the appeal heretofore allowed herein, shall include the following:

Complaint;
Answer;
Stipulation of Facts, including exhibit attached thereto, being Army Regulations No. 210 65, dated June 29, 1929, and as modified by Circular 57 of the War Department, dated October 31, 1929;
Findings of Fact and Conclusions of Law;
Judgment of the Superior Court;
Opinion of the Superior Court;
Judgment of the Supreme Court of California;
Opinion of the Supreme Court of California;
Respondent's Petition for Rehearing;
Order Denying Petition for Rehearing;
Petition for Appeal, Assignment of Errors, and Prayer for Reversal;
Statement under Rule 12;
Order Allowing Appeal;
Bond for Costs;
Citation;
Notice under Rule 12, paragraph 2, and Proof of Service; and
[fol. 56] Stipulation as to Contents of Transcript of Record.

Dated July 26th, 1933.

Felix T. Smith, V. K. Butler, Jr., Attorneys for Appellant. U. S. Webb, Attorney General of the State of California, by H. H. Linney, Deputy Attorney General.

[fol. 56½]. [File endorsement omitted.]

[fol. 57] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 58] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed Aug. 15, 1933.

Comes now the appellant in the above entitled cause and states that the points upon which it intends to rely in this court in this case are as follows:

Point No. 1. The Supreme Court of the State of California erred in upholding the validity of the California Motor Vehicle Fuel Tax Act, (Cal. Stats. 1923, p. 571, chap. 267, as amended by the Statutes of 1927, pp. 1308, 1565) when applied to sales of gasoline, made within the territorial limits of the United States military reservation at the Presidio, San Francisco, California, to the Presidio Post Exchange.

Point No. 2. The Supreme Court of the State of California erred in holding that the State of California, having ceded to the United States exclusive jurisdiction over certain territory known as the Presidio, San Francisco, for the establishment of a federal military reservation, has the power thereafter to invade that territory by the imposition of a tax upon sales therein, without the sovereign's consent.

[fol. 59] Point No. 3. The Supreme Court of the State of California erred in holding that sales and deliveries of gasoline from San Francisco to the Presidio Post Exchange are subject to excise taxes imposed by the California Motor Vehicle Fuel Tax Act (Cal. Stats. 1923, p. 571, chap. 267, as amended by the Statutes of 1927, pp. 1308, 1565).

Point No. 4. The Supreme Court of the State of California erred in holding that deliveries of gasoline from San Francisco to the Presidio Post Exchange do not constitute commerce within the exclusive jurisdiction of the United States upon which the State of California may not levy a tax or impose a burden.

Point No. 5. The Supreme Court of the State of California erred in holding that a sale of gasoline to the Presidio Post Exchange is not a sale to a department of the Government of the United States for the official use of the Government.

Point No. 6. The Supreme Court of the State of California erred in reversing the judgment of the Superior Court of the State of California, with directions to that court to enter judgment for the plaintiff as prayed.

The appellant further states that the whole of the record, as filed, is necessary for the consideration of the case, and that all parts of the record, as filed, are deemed necessary to be printed except Army Regulations No. 210-65, of which printed copies have been supplied by the appellant in accordance with the Act of February 13, 1911, c. 47, sec. 2 (36 Stat. 901, 28 U. S. C. sec. 866) and with Rule 32, paragraph [fols. 60 & 61] 6, Revised Rules of the Supreme Court of the United States. The appellant especially states that "Respondent's Petition for a Rehearing," and the order of the Supreme Court of the State of California denying the same, are deemed necessary to be printed.

Dated August 10th, 1933.

Oscar Sutro, Felix T. Smith, V. K. Butler, Jr., Counsel for Appellant.

Due service of receipt of a copy of the within statement of points to be relied upon and designation of the parts of the record to be printed is hereby acknowledged this 10th day of August, 1933.

U. S. Webb, Attorney General of the State of California, by H. H. Linney, Deputy Attorney General.

[fol. 62] [File endorsement omitted.]

Endorsed on cover: File No. 37,950. California Supreme Court. Term No. 347. Standard Oil Company of California, appellant, vs. The People of the State of California. Filed August 15, 1933. File No. 347, O. T., 1933.